

terian Church of Westfield, all in New Jersey, for an anti-polygamy amendment to the Constitution—to the Committee on the Judiciary.

Also, petitions of Colonial Council, No. 169, of Belvidere, N. J., and Elizabeth Council, No. 10, of Elizabeth, N. J., Daughters of Liberty, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. FULKERSON: Petition of the Andrew County Enterprise, against the tariff on linotype machines—to the Committee on Ways and Means.

By Mr. HULL: Petition of the Nevada Business Men's League, against the so-called "post-check currency bill"—to the Committee on the Post-Office and Post-Roads.

By Mr. KELHER: Petition of the maritime committee of the Boston Chamber of Commerce, asking for the passage of bill S. 2262, to construct a derelict destroyer—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Alliance Israelite Universelle and the Federation of Jewish Organizations, protesting against the passage of the Dillingham bill—to the Committee on Immigration and Naturalization.

Also, petition of the Society for Political Study, of New York City, asking for consideration of bills S. 50 and 2962 and H. R. 4462—to the Committee on the District of Columbia.

By Mr. JOHNSON: Paper to accompany bill for relief of Elizabeth Kerr—to the Committee on Pensions.

By Mr. LINDSAY: Petition of E. A. Russell et al., for the Calder bill in behalf of employees of the navy-yards of the United States who have lost either an arm or leg through no carelessness of their own, while on duty—to the Committee on Naval Affairs.

Also, paper to accompany bill for relief of State of Missouri (bill S. 567)—to the Committee on War Claims.

By Mr. OLMSTED: Petition of the Board of Trade of Harrisburg, Pa., for preservation of Niagara Falls—to the Committee on Rivers and Harbors.

By Mr. PATTERSON of South Carolina: Paper to accompany bill for relief of Carrie Trotter—to the Committee on Pensions.

Also, papers to accompany bills for relief of estate of W. J. Peebles, estate of Samuel R. Ihly, estate of Pierson Peebles, estate of Julia R. Speaks, estate of William Weekly, estate of Reuben Turner, and estate of Elizabeth Youmans—to the Committee on War Claims.

By Mr. REYNOLDS: Petition of the Free Press, against the tariff on linotype machines—to the Committee on Ways and Means.

Also, paper to accompany bill for relief of Henry Fash—to the Committee on Invalid Pensions.

Also, petition of the Inquirer Printing Company, for an amendment to the postal laws making legal all subscriptions paid for by others than the recipients of papers—to the Committee on the Post-Office and Post-Roads.

By Mr. RICHARDSON of Alabama: Petition of Richard Garner, heir of Thomas Williams—to the Committee on War Claims.

By Mr. RIXEY: Paper to accompany bill for relief of William H. Byles—to the Committee on Invalid Pensions.

By Mr. SCHNEEBELI: Petition of Camp Hawkins Home, No. 1, Society of the Army of the Philippines, for the Bonyne bill to provide medals for officers and men serving in the Spanish war for service in the Philippine war after expiration of term of enlistment—to the Committee on Military Affairs.

Also, petitions of Charles F. Bushnell and J. W. Maley, for an amendment to the postal laws making legal all subscriptions paid for by others than the recipients of papers—to the Committee on the Post-Office and Post-Roads.

Also, petition of Charles H. Bennett, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. SMITH of Maryland: Petition of Washington Camps, Nos. 13, of Church Hill; 29, of Sudlerville, and 48, of Chestertown, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

Also, petitions of the Showell Packing Company; the Mumford Packing Company, of Showell; Gilliss & Dashiell, of Quantico; H. W. Roberts, of Clara; Carver & Co., of Morumsco; J. W. Willing, of Nanticoke, and the Denton Canning Company, of Denton, all in the State of Maryland, praying the enactment of the pure-food bill with an amendment to exempt canned goods from being stamped in terms of weight or measure—to the Committee on Interstate and Foreign Commerce.

By Mr. SMITH of Pennsylvania: Petition of the Woman's Christian Temperance Union and the Presbyterian Church of Freeport, Pa., for an amendment to the Constitution abolishing polygamy—to the Committee on the Judiciary.

Also, petition of John W. Rohrer, for amendment to the postal law making legitimate all subscriptions paid for by others than the recipient—to the Committee on the Post-Office and Post-Roads.

By Mr. SOUTHARD: Petition of Hugh Guthrie, James D. Knight, J. R. Dilley, and J. W. Green, for the Dalzell bill granting relief of \$2 per day to all ex-Union prisoners of war in rebel prisons for longer period than thirty days—to the Committee on Invalid Pensions.

By Mr. WADSWORTH: Petition of William McKinley Council, No. 125, Junior Order United American Mechanics, of Lockport, N. Y., favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. WEBB: Paper to accompany bill for relief of William R. Watts—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Mary Ann Cody—to the Committee on Pensions.

By Mr. WEEKS: Petition for relief of the landless Indians of northern California and of southern California, from citizens of Massachusetts—to the Committee on Indian Affairs.

By Mr. WOOD of New Jersey: Petitions of Camp No. 29, of Merchantsville; Camp No. 25, of Delanco; Camp No. 82, of Whitesville; Camp No. 5, of Dover; Camp No. 16, of Jutland; Camp No. 87, of Lakehurst; Camp No. 23, of Palmyra; Camp No. 11, of Sterling; Camp No. 67, of Jersey City; Camp No. 41, of Plainfield; Camp No. 2, of Camden; Camp No. 62, of Woodbury; Camp No. 14, of Trenton; Camp No. 68, of Cassville; Camp No. 9, of Belvidere; Camp No. 58, of Alloway; Camp No. 12, of Milford; Camp No. 19, of Danville; Camp No. 86, of Smithburg; Camp No. 57, of Newfield; Camp No. 52, of Stockholm; Camp No. 30, of Plainfield, and Camp No. 42, of Netcong, all in New Jersey, Patriotic Order Sons of America, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

Also, petition of the editor of the Daily True American and Carpenter & Son, publishers of the Clinton Democrat, for an amendment to the postal laws making legitimate all subscriptions paid for by others than the recipients of papers—to the Committee on the Post-Office and Post-Roads.

SENATE.

FRIDAY, May 11, 1906.

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. SCOTT, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

CARRYING OF DANGEROUS ARTICLES ON PASSENGER STEAMERS.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States; which was read:

To the Senate:

Senate bill No. 5514 is returned herewith without approval, for the reasons set forth in the following report from the Secretary of Commerce and Labor:

"I have the honor to return herewith the bill (S. 5514) an act to amend section 4472 of the Revised Statutes relating to the carrying of dangerous articles on passenger steamers, and to state, in reply to the request contained in the letter of May 5, 1906, that the Department objects to the approval of the bill for the following reasons:

"The word 'passenger' in the bill should be 'passengers.' It passed the Senate 'passengers' and the House of Representatives 'passenger.' The mistake was not detected and the bill was enrolled and signed by the Speaker of the House and the President of the Senate with the word 'passenger.' In the opinion of the Department the circumstances of the passage of the bill are sufficient to raise doubt as to its validity and question as to its application."

THEODORE ROOSEVELT.

THE WHITE HOUSE, May 10, 1906.

Mr. FRYE. I move that the message be referred to the Committee on Commerce and printed.

The motion was agreed to.

Mr. FRYE. The Committee on Commerce was informed of the mistake made in enrolling the bill or in the House, and it authorized me to report this morning and ask present consideration of the following bill. It is important that it shall be passed immediately, owing to the fact that there are no yachts nowadays that do not carry launches propelled by naphtha or some like power, and the yachting season is about commencing. The ruling of the inspector-general in New York would deprive them of the privilege of using those launches. I report from the Committee on Commerce a bill to correct that mistake, which I ask may be now considered.

The bill (S. 6129) to amend section 4472 of the Revised Statutes of the United States relating to the carrying of dan-

gerous articles on passenger steamers was read the first time by its title, and the second time at length, as follows:

Be it enacted, etc., That section 4472 of the Revised Statutes be, and the same is hereby, amended by adding thereto the following provision: "Provided, however, That nothing in the provisions of this title shall prohibit the transportation by vessels not carrying passengers for hire of gasoline or any of the products of petroleum for use as a source of motive power for the motor boats or launches of such vessels."

The VICE-PRESIDENT. The Senator from Maine asks for the present consideration of the bill which has just been read.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

FINDINGS OF COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of the County Court of Ste. Genevieve County, Mo., v. The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the Vice-President:

S. 2296. An act restoring to the public domain certain lands in the State of Minnesota;

S. 4976. An act to grant certain land to the State of Minnesota to be used for the construction of a sanitarium for the treatment of consumptives;

S. 5498. An act granting additional lands from the Fort Douglas Military Reservation to the University of Utah;

S. 5796. An act to authorize the construction of a bridge across the Missouri River and to establish it as a post-road;

H. R. 13946. An act for the relief of Charles L. Allen;

H. R. 15095. An act authorizing the condemnation of lands or easements needed in connection with works of river and harbor improvements at the expense of persons, companies, or corporations;

H. R. 18204. An act to authorize the Northampton and Halifax Bridge Company to construct a bridge across Roanoke River at or near Weldon, N. C.; and

H. J. Res. 134. Joint resolution authorizing the construction and maintenance of wharves, piers, and other structures in Lake Michigan, adjoining certain lands in Lake County, Ind.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of 6,000 railroad men of Garrett, Ind., remonstrating against the adoption of the amendment to the railroad rate bill taking away the right of free transportation to the families of railroad employees; which was ordered to lie on the table.

Mr. FLATT presented a petition of the Chamber of Commerce of Troy, N. Y., praying for the ratification of the proposed pending treaty between the United States and Santo Domingo; which was referred to the Committee on Foreign Relations.

He also presented petitions of Local Grange No. 591, Patrons of Husbandry, of Stony Ford; of the Manufacturing Perfumers' Association of New York City; of the Chamber of Commerce of Troy, and of sundry citizens of New York City and Brooklyn, all in the State of New York, and of the American Federation of Musicians of St. Louis, Mo., praying for the removal of the internal-revenue tax on denaturalized alcohol; which were referred to the Committee on Finance.

Mr. GALLINGER presented a petition of sundry citizens of Swansey, N. H., praying for an investigation into the existing conditions in the Kongo Free State; which was referred to the Committee on Foreign Relations.

He also presented a petition of the national committee on legislation, Patriotic Order Sons of America, of Odenton, Md., praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

He also presented a memorial of the Homeopathic Medical Society of the District of Columbia, remonstrating against the enactment of legislation to regulate the practice of osteopathy in the District of Columbia; which was ordered to lie on the table.

He also presented the memorial of J. C. Oakley, of Woodsville, N. H., remonstrating against the enactment of legislation to prohibit the issuance of free passes to railroad employees and their families; which was ordered to lie on the table.

Mr. DRYDEN presented sundry petitions of citizens of Montclair, N. J., praying for the enactment of legislation to establish a children's bureau in the Department of the Interior; which were referred to the Committee on Education and Labor.

He also presented the petition of J. T. Tubby, of New York City, N. Y., praying for the enactment of legislation to create a national advisory board of civic art in the District of Columbia; which was referred to the Committee on the District of Columbia.

He also presented petitions of sundry citizens of South Orange, East Orange, Plainfield, and Camden, all in the State of New Jersey, and of the International Association of Master House Painters and Decorators of the United States and Canada, of Somerville, Mass., praying for the enactment of legislation to remove the duty on denaturalized alcohol; which were referred to the Committee on Finance.

He also presented sundry petitions of citizens of Hoboken, N. J., praying for the enactment of legislation to restrict immigration; which were referred to the Committee on Immigration.

He also presented petitions of sundry citizens of Lakewood, Seabright, Clinton, Camden, Ocean Grove, and Trenton, all in the State of New Jersey, praying for the enactment of legislation to amend the postal laws relative to newspaper publications; which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the William Huger & Co., of Newark, N. J., and a petition of Battin & Co., of Newark, N. J., praying for the enactment of legislation to prohibit the importation, exportation, or carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold and silver or their alloys; which were referred to the Committee on Interstate Commerce.

Mr. HOPKINS presented petitions of sundry citizens of Chicago, Lagrange, Springerton, Kinderhook, Aurora, Quincy, Decatur, and Elwood, all in the State of Illinois, praying for the removal of the internal-revenue tax on denaturalized alcohol; which were referred to the Committee on Finance.

Mr. NELSON presented petitions of sundry citizens of Watson, Minn., praying for the enactment of legislation to remove the duty on denaturalized alcohol; which were referred to the Committee on Finance.

Mr. PENROSE presented petitions of sundry citizens of Philadelphia and Mechanicsburg; of the Standard Automobile Company, of Pittsburgh; of Local Grange No. 131, of Mill Village; of Local Granges Nos. 384 and 876, of Knoxville; of Sandy Lake Grange, No. 393, of Polk; of Local Grange No. 533, of Clearfield; of Local Grange No. 781, of Port Royal; of Local Grange No. 872, of Tidal; of the Philadelphia Piano Trade Association, of Philadelphia; of the Estey Company, of Philadelphia; of Crush Creek Grange, No. 573, of Wilgus, and of Local Grange No. 54, of Wellsboro, Patrons of Husbandry, all in the State of Pennsylvania, praying for the removal of the internal-revenue tax on denaturalized alcohol; which were referred to the Committee on Finance.

Mr. BRANDEGEE presented a petition of the National Society of the Daughters of the American Revolution, praying for an investigation into the industrial conditions of the women of the country; which was referred to the Committee on Education and Labor.

He also presented a petition of the Norwalk Business Men's Association, of Norwalk, Conn., and a petition of sundry citizens of Bridgeport, Conn., praying for the removal of the internal-revenue tax on denaturalized alcohol; which were referred to the Committee on Finance.

Mr. SCOTT presented memorials of sundry railroad employees of Parkersburg, Benwood Junction, Fairmont, Grafton, and Weston, all in the State of West Virginia, remonstrating against the enactment of legislation to prohibit the issuance of free passes to railroad employees and their families; which were ordered to lie on the table.

Mr. LODGE presented memorials of 70 locomotive engineers of Greenfield, Mass., and 70 locomotive engineers of Fitchburg, Mass., remonstrating against the adoption of the amendment to the railway rate bill prohibiting the issuance of free transportation to the families of railroad employees; which were ordered to lie on the table.

Mr. ELKINS presented sundry memorials of citizens of Grafton, Clarksburg, Weston, Terra Alta, Parkersburg, and Fairmont, all in the State of West Virginia, and of Memphis, Tenn., remonstrating against the enactment of legislation to prohibit the issuance of passes to railroad employees and their families; which were ordered to lie on the table.

Mr. HOPKINS presented memorials of sundry citizens of Chicago, Springfield, Paxton, Pontiac, Peoria, Mount Carmel,

Rock Island, Sycamore, Belleville, and Rockford, all in the State of Illinois, and of Louisville, Ky., remonstrating against the enactment of legislation to prohibit the issuance of passes to railroad employees and their families; which were ordered to lie on the table.

He also presented the memorial of J. E. Defebaugh, editor of the American Lumberman, of Chicago, Ill., remonstrating against the enactment of legislation to remove the duty on denaturalized alcohol; which was referred to the Committee on Finance.

Mr. MONEY presented a petition of the Progressive Business League, of Gulfport, Miss., praying for the enactment of legislation providing for the acceptance of the channel and the anchorage basin between Ship Island Harbor and Gulfport, in that State; which was referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

Whereas there is now pending before Congress a bill to provide for the acceptance of the channel and the anchorage basin between Ship Island Harbor and Gulfport, Miss., and to repeal portions of the river and harbor act of March 3, 1889, relating thereto; and

Whereas the said harbor and anchorage basin has been dredged and now accommodates vessels of 21 and 22 feet draft or more; and

Whereas it is in the interest of commerce that the said channel and anchorage basin should be accepted and maintained by the Government: Therefore, be it

Resolved by the Progressive Business League of Gulfport, Miss., and the citizens of Gulfport in joint meeting assembled, That our immediate Representative in Congress and the Senators from the State of Mississippi be, and they are hereby, earnestly requested and urged to use every effort in their power to secure the passage of said bill, which is House resolution No. 18664, and which was introduced by Representative E. J. BOWERS on the 28th day of April, 1906;

Resolved further, That we earnestly urge the Rivers and Harbors Committee of the House of Representatives of the Congress of the United States to favorably act upon said bill as speedily as possible, to the end that the same may be enacted into law;

Resolved, That a copy of these resolutions be forwarded by the secretary of the Gulfport Progressive Business League to the Senators in the Congress of the United States from the State of Mississippi and to our immediate Representatives.

Mr. HANSBROUGH presented a petition of sundry citizens of North Dakota, praying for the removal of the internal-revenue tax on denaturalized alcohol; which was referred to the Committee on Finance.

Mr. KNOX presented memorials of sundry Baltimore and Ohio Railroad employees and of sundry Southern Railway employees, remonstrating against the passage of the amendment to the railroad rate bill prohibiting the issuing of passes to railroad employees and members of their families; which was ordered to lie on the table.

REPORTS OF COMMITTEES.

Mr. WARREN, from the Committee on Military Affairs, to whom was referred the bill (S. 3927) to increase the efficiency of the veterinary service of the Army, reported it without amendment, and submitted a report thereon.

Mr. FORAKER, from the Committee on Pacific Islands and Porto Rico, to whom was referred the bill (H. R. 18502) to empower the Secretary of War, under certain restrictions, to authorize the construction, extension, and maintenance of wharves, piers, and other structures on lands underlying harbor areas and navigable streams and bodies of waters in or surrounding Porto Rico and the islands adjacent thereto, reported it without amendment, and submitted a report thereon.

Mr. NELSON, from the Committee on Public Lands, to whom was referred the bill (H. R. 17127) to provide for the subdivision and sale of certain lands in the State of Washington, reported it with amendments, and submitted a report thereon.

BILLS INTRODUCED.

Mr. PENROSE introduced a bill (S. 6130) for the advancement of certain officers of the Navy who served during the civil war and were retired prior to March 3, 1899; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. FRYE introduced a bill (S. 6131) granting an increase of pension to Frances A. Jepson; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. MCCREARY introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 6132) for the relief of the heirs of James H. Woodhall, deceased; and

A bill (S. 6133) for the relief of Jake T. Patrick.

Mr. HANSBROUGH introduced a bill (S. 6134) providing for the conveyance to the State of North Dakota of certain tracts of land for the use and benefit of the North Dakota State Historical Society; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. DANIEL introduced a bill (S. 6135) granting a pension

to Mary E. Hughes; which was read twice by its title, and referred to the Committee on Pensions.

Mr. DILLINGHAM introduced a bill (S. 6136) granting a pension to Persis A. Gowen; which was read twice by its title, and referred to the Committee on Pensions.

Mr. BULKELEY introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6137) granting an increase of pension to Fannie L. Pike;

A bill (S. 6138) granting an increase of pension to Eliza P. Norton;

A bill (S. 6139) granting an increase of pension to Eliza A. Brusie;

A bill (S. 6140) granting an increase of pension to Julia A. Birge;

A bill (S. 6141) granting an increase of pension to Ransom C. Russell;

A bill (S. 6142) granting an increase of pension to Frederick M. Hart;

A bill (S. 6143) granting an increase of pension to Thomas J. Northrop;

A bill (S. 6144) granting an increase of pension to Henry Savage; and

A bill (S. 6145) granting an increase of pension to Enoch Bolles.

ESTATE OF CHARLES M. DEMAREST.

Mr. PLATT. I ask for the immediate consideration of the bill (H. R. 6101) for the relief of the estate of Charles M. Demarest, deceased, which was reported unanimously by the Committee on Finance.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to pay to the legal representatives of the estate of Charles M. Demarest, late of Warwick, in the State of New York, \$122.26, being the amount due on one first-mortgage preferred bond issued by the Champaign, Havana and Western Railway Company, No. 251, and dated July 1, 1879, and paid into the United States Treasury on February 23, 1898, by the clerk of the circuit court of the United States for the southern district of Illinois, in accordance with section 996, as amended by the act of February 19, 1897 (29 Stat. L., p. 578), which provides that money remaining in the registry of court unclaimed for ten years shall be deposited to the credit of the United States.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

EXTENSION OF IRRIGATION ACT TO STATE OF TEXAS.

Mr. BAILEY. I ask unanimous consent for the present consideration of the bill (H. R. 14184) to extend the irrigation act to the State of Texas.

The VICE-PRESIDENT. There is a memorandum on the bill indicating that the Senator from Massachusetts [Mr. LODGE] wishes to be present when the bill is considered.

Mr. BLACKBURN. The Senator from Massachusetts is here. The VICE-PRESIDENT. The bill will be read.

The Secretary read the bill.

Mr. LODGE. I hope the bill may not be passed by unanimous consent. It seems to me to be a very important bill, and I wanted an opportunity to look at it and at the report before it is taken up. I have been so busy that I have not had an opportunity to do so. I hope it need not be pressed at this time. It seems to me to be a very large question.

Mr. BAILEY. No, Mr. President; it simply extends the law already existing to the arid regions of Texas; and Texas, like the people who go to mill, takes her place in the rear of all the others, to wait until all that has been provided for the others has been accomplished.

Mr. LODGE. Are there public lands of the United States in Texas?

Mr. BAILEY. Not an acre of public land belongs to the United States.

Mr. LODGE. That seems to me to be a very important point.

Mr. BAILEY. But the Senator understands that nothing is given to anybody, but that all who get the benefit of this act are compelled to return an equivalent to the Treasury. It seems to me that if the people of the arid regions of Texas return their equivalent to the Treasury they are entitled to just as much as the people of the arid regions of any other State or Territory.

Mr. LODGE. I agree with the Senator; I think they are; but my understanding of the legislation we have had hitherto was that the sale of public lands furnished the funds by which the work of irrigation was carried on.

Mr. BAILEY. That is true.

Mr. LODGE. Now, Texas has no public lands of the United States.

Mr. BAILEY. That is true.

Mr. LODGE. Therefore, where are the funds coming from?

Mr. BAILEY. They will come from the same source that the funds used in other States come from; and like all the money furnished to any other State, it must be repaid into the Treasury.

I will say to the Senator from Massachusetts frankly that I did not sympathize with this original legislation, but it was entered upon by the Government, it has been prosecuted with great success in certain regions, and I do not believe that there can be any fair disposition to exclude from the provisions of the act any arid region in the Republic.

Mr. HOPKINS. Will the Senator from Texas allow me?

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Illinois?

Mr. BAILEY. Certainly.

Mr. HOPKINS. I wish to suggest that as I remember the law Texas will be practically on the same basis as the other States; that licenses will be given out; and the money received from that source is used to return the advances made by the Treasury for all of the irrigation purposes in various States. So if half a million or money or a million or five hundred millions is used in Texas there will be the same facility for returning it in Texas that there is in Idaho or Montana.

Mr. BAILEY. That is precisely true.

Mr. LODGE. That is the point I wanted to get at. The money is taken from the funds of lands in other States.

Mr. BAILEY. But the lands in the other States do not belong to the other States.

Mr. LODGE. No; they belong to the United States.

Mr. BAILEY. They belong to a common fund.

Mr. LODGE. Certainly—the United States.

Mr. BAILEY. They belong to the common fund of the people. In other words, they belong just as much to the State of Texas as they do to the State in which they are situated. I remember once, when a Member of the House, trying to grant those lands to the States in which they were situated, but I could not secure the favorable consideration for that proposition.

Mr. HANSBROUGH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from North Dakota?

Mr. BAILEY. Certainly.

Mr. HANSBROUGH. Is this a request for unanimous consent?

Mr. BAILEY. It is.

Mr. HANSBROUGH. I dislike to object, but I want to make a further examination of the bill and perhaps, at another time, offer some amendments to it, if the Senator from Texas will allow it to go over.

Mr. BAILEY. Of course I assume when the Senator says he wants to examine it that he means exactly what he says, and he does not mean it as a mere matter of delay.

Mr. HANSBROUGH. Not at all.

Mr. BAILEY. I assume that, and I withdraw the request.

Mr. HANSBROUGH. I think the Senator will acquit me of ever having entered into an effort to delay any measure.

The VICE-PRESIDENT. The request is withdrawn.

SHERMAN AVENUE, IN THE CITY OF WASHINGTON.

Mr. GALLINGER. I move that the bill (S. 5882) to provide for the reassessment of benefits in the matter of the extension and widening of Sherman avenue, in the District of Columbia, and for other purposes, be recommitted to the Committee on the District of Columbia.

The motion was agreed to.

ASSOCIATION OF NAVAL MILITIA.

Mr. GALLINGER. Mr. President, a few days ago the Senate ordered to be printed a public document known as "Document No. 435," the proceedings of the annual meeting of the Association of the Naval Militia of the United States. As there are but a few numbers available, I move that 1,000 additional copies be printed for the use of the Association of the Naval Militia of the United States.

The motion was agreed to.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. BURKETT submitted an amendment proposing to appropriate \$15,000 for the extension of forest planting on forest reserves, of which not to exceed \$2,500 may be used to construct a permanent station building on the Dismal River Forest Reserve, Nebraska, intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

Mr. LATIMER submitted an amendment providing that patrons on all rural free-delivery mail routes that are now established or that may hereafter be established may put up for their individual use boxes constructed of such material as they may desire, etc., intended to be proposed by him to the post-office appropriation bill; which was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. BLACKBURN submitted an amendment proposing to appropriate \$1,200 for the salary of one inspector of marine products in the District of Columbia, intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

WITHDRAWAL OF PAPERS—LEWIS D. SIMMONDS.

On motion of Mr. WARREN, it was

Ordered, That on the application of Lewis D. Simmonds, he is authorized to withdraw from the files of the Senate all papers accompanying Senate bill No. 2073, Fifty-second Congress, first session, entitled "A bill to remove the charge of desertion from the military record of Lewis D. Simmonds," there having been no adverse report thereon.

AGRICULTURAL LANDS IN FOREST RESERVES.

Mr. FULTON. Some days ago I entered a motion to reconsider the vote whereby the bill (H. R. 17576) to provide for the entry of agricultural lands within forest reserves was passed. I did so at the request of the Senator from Idaho [Mr. HEYBURN], who desired to examine it and perhaps submit an amendment. Since then he has, I understand, said that the motion may be withdrawn. I ask leave, therefore, at this time, to withdraw the motion to reconsider the vote by which the bill was passed.

The VICE-PRESIDENT. The Senator from Oregon withdraws the motion to reconsider and the bill stands passed.

FOREIGN-BUILT DREDGES.

Mr. FRYE submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 395) concerning foreign-built dredges, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same.

WM. P. FRYE,

J. H. GALLINGER,

JAMES H. BERRY,

Conferees on the part of the Senate.

C. H. GROSVENOR,

THOS. SPIGHT,

Conferees on the part of the House.

The report was agreed to.

REGULATION OF RAILROAD RATES.

Mr. CULLOM. Mr. President, I have a large number of telegrams here from gentlemen in Illinois. I will ask that one of them be read, and will present the balance without reading. They are all upon the question of free passes to certain classes of people. I ask that the telegram which I send to the table be read.

The VICE-PRESIDENT. The telegram will be read, if there is no objection.

The Secretary read as follows:

[Telegram.]

CHICAGO, ILL., May 10, 1906.

S. M. CULLOM,

United States Senate, Washington, D. C.

One hundred and twenty-five thousand railway employees of Illinois vigorously protest against the Senate amendment shutting off our families and dependents from securing free transportation. This will deprive us of the only privilege now granted and make it impossible for our families to travel without paying full fare. We have contended for this in our organizations for twenty-five years, and we certainly deplore the attitude of the Senate in such uncharitable action.

WM. CLARK,

*Chief Conductor Order of Railway Conductors, No. 1,
5919 Wabash Avenue.*

Mr. CULLOM. I simply desire to say that I have received a number of other dispatches of like tenor, and I file them all, so that they may be considered. I ask that they be laid on the table, as it is not worth while to refer them to the committee.

The VICE-PRESIDENT. It will be so ordered.

Mr. WARNER. I present certain telegrams and ask that the first be read and that all the telegrams be printed in the RECORD.

Mr. BLACKBURN. Does the Senator from Missouri propose to print the telegrams in the RECORD?

The VICE-PRESIDENT. The Senator from Missouri will kindly restate his request.

Mr. WARNER. I ask that the first telegram be read and that the others be printed in the RECORD.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Missouri?

Mr. BLACKBURN. Mr. President, if every member of the Senate were to print in the RECORD all the telegrams he has received upon this subject, estimating them from my own experience, the RECORD would be burdened for the next two months to come.

Mr. WARNER. I could have burdened it for four months, but have made a few selections. However, I withdraw the request as to printing in the RECORD.

The VICE-PRESIDENT. The Senator from Missouri requests the reading of the dispatch he has sent to the desk.

Mr. BLACKBURN. I only intended by what I said to make this point clear, that if one Senator is to print in the RECORD all of these protesting telegrams it would be but fair that every other Senator should do the same thing. I have received several score, probably a hundred of them, but thought it would be too burdensome to the RECORD for all of them to appear there.

Mr. WARNER. In reply I wish to say that I do not wish to burden the RECORD. I have possibly done so as little as anyone in the matter of printing in the RECORD.

The VICE-PRESIDENT. Without objection, the Secretary will read the telegram.

Mr. CULLOM. Mr. President, allow me to make one remark, lest I may have been misunderstood. I did not ask that the telegrams which I sent to the desk be printed in the RECORD.

The VICE-PRESIDENT. They were not so ordered.

Mr. MORGAN. Mr. President, I have in my hand about fifty, and I have twenty-five more that ought to go in the RECORD if those sent to the desk by the Senator from Missouri go in.

Mr. FRYE. The Senator from Missouri withdrew his request.

The VICE-PRESIDENT. Is there objection to the reading of the telegram, as requested by the Senator from Missouri? The Chair hears none.

The Secretary read as follows:

[Telegram.]

MEMPHIS, TENN., May 10, 1906.

Senator WILLIAM WARNER,
Washington, D. C.:

On behalf of the locomotive engineers of Division 502, Brotherhood of Locomotive Engineers, at Kansas City, Mo., you are requested to use your influence and vote against the amendment to Senate bill 2261, we knowing that the passage of this amendment will work a great hardship on the families of railroad employees throughout the country.

Respectfully, yours,

W. H. MEAD, Chief Engineer Division 502.

The VICE-PRESIDENT. The dispatch just read and the others sent to the desk by the Senator from Missouri will lie on the table.

Mr. FORAKER. I have a telegram from the Grand International Brotherhood of Locomotive Engineers, which I think ought to be read and put in the RECORD, and I have about a hundred others, which I will ask some one to relieve me of. I send them to the desk to be filed.

The VICE-PRESIDENT. Is there objection to the request made by the Senator from Ohio? The Chair hears none, and the Secretary will read the telegram.

The Secretary read as follows:

[Telegram.]

MEMPHIS, TENN., May 10, 1906.

JOSEPH B. FORAKER

Senate Chamber, Washington, D. C.:

I am authorized by the Grand International Brotherhood of Locomotive Engineers' convention to say that we earnestly protest against the adoption of the Senate amendment that discriminates against the issuing of transportation to grand officers of the different railroad organizations who are employed by the employees in the different classes of railroad service and also against the restriction of the issuing of transportation to the families of employees upon the different railroad systems, believing that this is an unfair and unjust discrimination against a class of worthy employees, and we hope that you will do all in your power to prevent the passage of this obnoxious amendment to the rate bill.

W. S. STONE, Grand Chief Engineer.

The VICE-PRESIDENT. The dispatches sent to the desk by the Senator from Ohio will lie on the table.

Mr. McCREARY. I have received a number of telegrams on the subject referred to similar to the one which has just been read. I will not ask that any of them be published in the RECORD, but I simply make the announcement that I have received those telegrams, and I hope we will have an opportunity to rescind the amendment which was passed when the bill comes into the Senate.

Mr. MORGAN. As all classes of persons interested in matters of this kind ought to be represented, and as I represent a very large constituency who have very little voice in the Federal Government, I will send to the desk and ask to have read the following dispatch.

The VICE-PRESIDENT. Without objection, the Secretary will read as requested by the Senator from Alabama.

The dispatch was read, and ordered to lie on the table, as follows:

[Telegram.]

BIRMINGHAM, ALA., May 9, 1906.

JOHN T. MORGAN,

United States Senate, Washington, D. C.:

Understand Senate committee considering resolution forbidding railroads issuing free transportation employees families. This be great hardship, and hope you will use your influence to defeat.

J. W. BRYAN,

President Brotherhood Railway Cooks.

Mr. GALLINGER. Mr. President, during the pendency of the railway rate bill I have received just one letter from a citizen of New Hampshire concerning it, and he is a man who keeps a little country store and finds fault because an express train does not stop to take a quarter of beef to the Boston market for him when another train comes along two or three hours after and accommodates him. So from my experience there is not an overwhelming demand for this legislation in New Hampshire.

In the matter of the employees of the railroads, who want about 4,000,000 people granted the privilege of free passes, I have received just one telegram. I presume it is from a New Hampshire man. It is dated Memphis, Tenn., and I think he is attending a convention at that point. I will simply send it to the desk without reading.

The VICE-PRESIDENT. The telegram will lie on the table.

Mr. GALLINGER. I should think it very probable if the rate bill lingers much longer in the Senate, I may receive additional telegrams, as this seems to be an infectious disease.

Mr. FRYE. Mr. President, I received a telegram from the president of a railroad company, saying that this legislation excluding the employees and their families would be detrimental both to the railroads and to the employees; that the present privilege which they enjoy gives them contentment, and it is regarded as a great boon; that they are more faithful in the service than they would be without it, and he thought it was a very decided mistake to make.

I think in the amendment adopted there was another mistake made equally great. It applied to attorneys exclusively employed by railroads. That would only apply to a very few attorneys in the United States. It would not apply to any local attorney, and the attorneys who are exclusively employed by a railroad have but little, if any, occasion to travel on the road. They are in their offices attending to the general business of the railroad and are not traveling, while the local attorneys are called upon to travel every few days to look after affairs about disasters and all that sort of thing. I think those two mistakes were made in that amendment, and when the amendment is before the Senate I hope some one will correct the mistake. If no one else does, I will try to do it myself.

Mr. BEVERIDGE. I send telegrams to the desk, not to have them read, except the one which I have indicated.

The VICE-PRESIDENT. The Senator from Indiana requests the reading of a dispatch. Without objection, the Secretary will read it.

The telegram was read, and ordered to lie on the table, as follows:

[Telegram.]

PRINCETON, IND., May 10, 1906.

Senator A. J. BEVERIDGE,

Washington, D. C.

There are 600 railroad employees here who want the pass amendment modified so as to include families of employees; otherwise great hardship will result to railroad men.

M. W. FIELDS,

Attorney Southern Railroad Company.

Mr. WARREN. Mr. President, following the subject touched upon in these telegrams and the remarks by the Senator from Maine with reference to the attorneys of railroads, it is very necessary, in my opinion, that there should be an amendment, if that part of the bill is to stand, permitting the owners and care takers of live stock to be passed from their homes to the point of shipment and on the freight trains with the stock to the point of delivery and back to their homes as has always been the practice.

There should be no objection to such an amendment, if the railroad companies are willing to pass on freight trains, etc., with live stock, the owners and the necessary men in charge of same, because it insures more humane treatment en route and a better condition of live stock in arriving at destination for slaughter.

Nearly all live stock is shipped through more than one State to reach the markets for slaughter, a large portion of it coming from the western country, going to Missouri River points or to Chicago. The railroads, in making up freight charges on live

stock, have really included the expense of carrying the men in charge. But under the proposed law, unless an amendment like the one proposed is adopted, they can not put these men on the bills of lading or pass them with the stock, nor from the stock tender's residence to and including point of shipment and point of delivery—that is, from his home, the round trip, back to his home, without collecting regular fare. While it is true, technically speaking, that railroads are compelled to receive, convey, and deliver live stock without the owners or agents attending them, etc., for loading, unloading, and caring for the stock en route, yet it is a common interest for the railroads, instead of carrying their own men under salary, to carry the owner or his men free without payment for service, the owners being willing to contribute the service of their men and including board and incidental expense, excepting only transportation for the sake of better treatment for the stock. The public is much better served, in that the live stock is more carefully loaded and unloaded and arrives at destination in a less bruised or fevered condition.

Thus both parties ought to desire the continuation of the present practice. Owners of live stock can not afford, in addition to the regular freight charges, wages of men, board, etc., to pay fares when riding over freight trains, as they do in one direction at least with the stock. Nor have we any reason to believe that the railroads will reduce the freight charges sufficiently to cover the fares if paid under the proposed law.

There practically has been no misuse or abuse of this transportation, since it is individual and nontransferable. It has been granted by all railroads alike, and hence does not tend to favoritism or discrimination, and of course causes no criticism and does no one an injustice.

I shall offer such an amendment at the proper time, if it is not offered by others, in the following words:

Or to owners and care takers of live stock when travelling with such stock, or when going to point of shipment or returning from point of delivery.

Mr. BEVERIDGE. I desire to know whether or not it is proper at this time to offer an amendment or to serve notice that I will offer an amendment to the amendment intended to be proposed by the Senator from Texas [Mr. CULBERSON]? If so, I desire to present such an amendment at this time.

The VICE-PRESIDENT. The amendment can be presented at this time.

Mr. BEVERIDGE. Then I desire to give notice that I will move to amend the amendment which is intended to be proposed by the senior Senator from Texas, when he offers such an amendment, as follows: Add after the word "dollars," on line 11, the amendment as proposed in the print, the following, which I read, because I think I can read it better than the clerks:

Provided, That said carrier of interstate commerce may, by arrangement with other carriers of interstate commerce, provide for free transportation of its bona fide employees and their families over the lines of such other carriers in connection with said free transportation over the lines of the carrier providing said free transportation.

Mr. TILLMAN. Mr. President—

Mr. SPOONER. Mr. President, I simply rise for the purpose of saying that not anticipating this eruption of telegrams, I left fifty or seventy-five at home.

I voted against the amendment offered by the Senator from Texas [Mr. CULBERSON] for the reason that it deprives railway carriers of the right to give passes to the families of their employees. I could see nothing whatever to justify that restriction. It destroys a practice which has existed for a great many years and to which I think employees are fairly entitled, and I do not think they should be deprived of it. Under that amendment—

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. Does the senior Senator from Wisconsin yield to his colleague?

Mr. ALDRICH. Mr. President, I rise to a question of order.

The VICE-PRESIDENT. The Senator from Rhode Island will state his question of order.

Mr. SPOONER. Why does the Senator raise a point of order against me, when he has sat here quietly through all this debate?

Mr. ALDRICH. I am trying to raise it on everyone so far as I can. My point of order is that this discussion is not now in order.

Mr. SPOONER. It will be in order when the bill comes before the Senate.

The VICE-PRESIDENT. The Chair sustains the point of order. Are there further bills or resolutions to be introduced?

Mr. DICK. I send to the desk, not to be read or printed, telegrams of like character as those already received, to be noted in the Record simply as petitions are noted.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Ohio?

There being no objection, the telegrams were ordered to be noted, and to lie on the table, as follows:

A telegram from the Order of Railway Conductors of Cleveland, Ohio; and

A telegram from the Grand International Brotherhood of Locomotive Engineers of Memphis, Tenn., remonstrating against the adoption of the amendment to the railway rate bill prohibiting the issuance of free transportation to bona fide employees and their families.

Mr. TILLMAN. I desire to introduce certain telegrams in the form of petitions similar to those which have been presented.

There being no objection, the telegrams were ordered to be noted, and to lie on the table, as follows:

Telegrams from citizens of Columbia, Greenville, Charleston, Winnsboro, Florence, and Timmons ville, all in the State of South Carolina; of Garrett, Ind., and of Chicago, Ill., remonstrating against the enactment of legislation to prohibit the issuance of passes to railroad employees and their families.

Mr. TILLMAN. Mr. President, is the morning business closed?

The VICE-PRESIDENT. It is not closed.

[Several bills were introduced, which appear under their proper heading.]

Mr. TELLER. Mr. President, I do not wish these telegrams put in the Record, but I should like to send them to the desk and say that I have received a great many more of the same kind.

There being no objection, the telegrams were ordered to be noted, and to lie on the table, as follows:

Telegrams from the International Association of Machinists of Denver, Colo.; from the officers and members of Local Division No. 29, Brotherhood of Locomotive Engineers, of Pueblo, Colo., and from the officers and members of Local Division No. 541, Brotherhood of Locomotive Engineers, of Denver, Colo.

Mr. BACON. Mr. President, I have received six or eight dozen of these telegrams, which I now present.

There being no objection, the telegrams were ordered to lie on the table, as follows:

Telegrams from E. M. Smith, of McDonough, Ga.; of A. C. Smith, of Selma, Ala.; D. H. Hopper and M. J. Burke, of Atlanta; L. O. Swain, C. P. Weekly, T. J. Russell, of Atlanta; Lawton & Cummins, of Savannah; J. D. Hermann, of Eastman; W. D. Kiddo and W. C. Warrell, of Outhbert; T. E. Dunbar, of Macon; Joseph B. and Bryan Cumming, of Augusta; G. W. Warwick, of Smithville; A. G. and Julian McCarry, of Hartwell; J. W. Whidlen and A. G. Jennings, of Macon; De Lacy & Bishop, of Eastman; J. I. Hall, of Macon; Dorsey Brewster, Howell & McDaniel, of Atlanta; T. S. Moyes, of Savannah; W. A. Winburn, of Savannah; S. F. Parrott, of Macon; Shumate & Maddox, of Dalton; H. Sterling, of Macon; J. D. Hudson, of Americus; N. E. Harris, of Macon; T. B. Cabiness, of Forsythe; A. S. Bussey, of Wrightsville; Bennett & Conyers, of Brunswick; J. Randolph Anderson, of Savannah; C. E. Battle, of Columbus; Thomas K. Scott, of Augusta; John B. Little, of Atlanta; C. R. Faulkner, of Dalton; Fermon Barrett, of Toccoa; W. H. Harris, of Fort Valley; Homer Dickinson, of Macon; Simon W. Hitch, of Waycross; J. B. Burnside and C. P. McLaughlin, of Hamilton; John H. Welsh, of Atlanta; George E. Florence, of Augusta; R. L. J. Smith, of Jefferson; W. A. Woodall, of Atlanta; Oscar J. Coogler, of Jonesboro; M. H. Sandwich and B. L. Tysinger, of Thomaston; A. C. Brown, of Commerce; R. B. Edwards, of Eastman; W. P. Cole and H. L. D. McPherson, of Carrollton; E. T. Brown, of Atlanta; King & Spalding, of Atlanta, and J. J. Strickland, of Athens, all in the State of Georgia.

The VICE-PRESIDENT. The morning business is closed; and the Chair lays before the Senate the unfinished business.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 5, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Mr. SPOONER. Now, Mr. President, without being subject to the point of order by the Senator from Rhode Island, I in my own right will finish what I was about concluding.

Under the amendment offered by the Senator from Texas this might very well happen, and it illustrates the injustice of the restriction. If an engineer staying at his post in time of danger to save a train load of passengers is mortally wounded, his wife and children could not get to his bedside by the courtesy of the company which he serves and to whose interest, as well as the public interest, he had been faithful, but they would be obliged to pay their fare.

If there is a band of men in the United States entitled—their

families as well as themselves—to the consideration of their employers, it is the railway train men, who are faithful, devoted, brave, and patient. It is a rare thing, Mr. President, for one of them to be found shirking his duty.

I voted against this amendment because my colleague had offered an amendment which in this respect seemed to me infinitely more just to the railway men of the country, and when the time comes—

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. Does the senior Senator from Wisconsin yield to his colleague?

Mr. SPOONER. I do.

Mr. LA FOLLETTE. The amendment which I had proposed to offer—

Mr. SPOONER. I referred to that.

Mr. LA FOLLETTE. Requires a little further amendment in order to meet objections which have been raised here this morning, and at the appropriate time (I would do it now if it could be done) I should like to offer that amendment for consideration.

Mr. FRYE. Will the Senator from Wisconsin yield to me one moment?

Mr. SPOONER. Yes.

Mr. LA FOLLETTE. It would relieve many Senators from having to respond to a large number of telegrams and letters which will continue to pour in upon us. I think the matter could be settled here in fifteen minutes if a proper provision is presented, and it could be done by unanimous consent.

Mr. FRYE. I wish to say for the information of the Senator from Wisconsin that when the bill is in the Senate it will be open to amendment.

Mr. LA FOLLETTE. I understand that.

Mr. FRYE. And having been agreed to now, it is not open to amendment.

Mr. LA FOLLETTE. I understand that. I was precluded from offering the amendment at the proper time in Committee of the Whole, because I chanced to be off the floor when the last line of section 1 was under consideration, and we passed the point when I could have offered the amendment. I shall offer it in the Senate whenever we take the bill up for consideration there.

The VICE-PRESIDENT. The Chair will state that there is no pending question before the Senate.

Mr. SPOONER. I can make one in a minute, if that is necessary.

The VICE-PRESIDENT. The Chair will entertain a question.

Mr. SPOONER. I yield to the Senator from Iowa, who will offer an amendment.

Mr. ALLISON. Mr. President, to relieve the situation in many ways, I hope, as respects this matter, I now move, on page 2, line 5, to strike out the words "and fairly remunerative."

The VICE-PRESIDENT. The Senator from Iowa proposes an amendment, which will be stated by the Secretary. The Senator is reading from the printed copy of the amendments as prepared by the Senate?

Mr. ALLISON. I am not reading from the bill.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 10 of the bill, in lines 20 and 21, strike out the words "and fairly remunerative" after the word "reasonable."

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Iowa.

Mr. ALLISON. Now, I ask the Senator from Wisconsin to yield to me for just one moment.

Mr. SPOONER. Certainly.

Mr. ALLISON. I desire to say at this time, Mr. President, that I have also received many telegrams on this subject. I was afraid I would not be able to make that statement unless I embraced this opportunity. I am in sympathy with the telegrams as respects those who are employed by the railroads.

Mr. SPOONER. Mr. President, continuing my observations for one moment only—

Mr. BEVERIDGE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Indiana?

Mr. SPOONER. I will, in one moment.

I had two purposes in view in addressing the Chair upon this subject, one was to explain why I voted against the amendment proposed by the Senator from Texas [Mr. CULBERSON] which was adopted. I am opposed to the granting of railway passes to Members of Congress, to public officials, and to the general public, but I think the line should be drawn as has been here suggested. Second, I wanted to say a few words in support of the justice of the proposition, which the Senator from Texas

has partly covered by a proposed substitute to his own amendment, allowing railway companies to issue passes to their employees and the families of their employees as they always have done. That is all.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Indiana?

Mr. BEVERIDGE. Mr. President—

Mr. LODGE. Mr. President, I have not spoken on this subject before.

The VICE-PRESIDENT. The Chair first recognized the Senator from Indiana [Mr. BEVERIDGE].

Mr. LODGE. I thought the Senator from Indiana had already spoken.

Mr. BEVERIDGE. I have not spoken on this subject since the bill was taken up this morning.

Mr. President, I merely rise to call the attention of the Senator from Wisconsin [Mr. SPOONER], and the attention of his colleague [Mr. LA FOLLETTE] as well, to the fact that the Senator from Texas [Mr. CULBERSON] on yesterday remedied the defects to which all these telegrams call attention, except in one particular, and that this morning I have given notice of an intention to move an amendment to his amendment, when he shall offer it, to still further completely remedy the defects to which these telegrams call attention. I call the attention of the senior Senator from Wisconsin to the fact, and also call the attention of his colleague to the fact, that the Senator from Texas has modified his amendment so as to include railway employees and their families amongst those to be entitled to receive free transportation; and this morning I have moved an amendment to provide that the carrier may provide for interchangeable transportation, so that the employee of any carrier and the family of that employee may be given free passes, not only over the road of the carrier issuing the same, but over connecting lines, which, I think, completely covers the defects which the telegrams have been complaining against.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Indiana yield to the Senator from Texas?

Mr. BEVERIDGE. I do.

Mr. CULBERSON. I thought the Senator had concluded.

Mr. NELSON. Mr. President, I rise to a point of order, that the feature of the bill which is being discussed by Senators is not now in order before the Senate.

Mr. BEVERIDGE. I—

Mr. NELSON. I think the question is on the amendment offered by the Senator from Iowa [Mr. ALLISON] and that we had better adhere to that. When we take up this other subject, we can then discuss it in order.

Mr. CULBERSON. I thought the Senator from Indiana [Mr. BEVERIDGE] had yielded the floor.

Mr. BEVERIDGE. I yield to the Senator from Texas.

Mr. CULBERSON. I desire simply to make a brief statement about the matter that has just been considered.

Mr. BEVERIDGE. I yield to the Senator from Texas.

Mr. CULBERSON. Mr. President—

Mr. ALDRICH. The Senator from Indiana can not yield to the Senator from Texas for a statement. I do not understand whether the Senator from Indiana holds the floor or the Senator from Texas.

Mr. CULBERSON. The Senator from Indiana yielded to me for a statement.

Mr. BEVERIDGE. I yielded to the Senator from Texas.

The VICE-PRESIDENT. The Senator from Texas is recognized.

Mr. CULBERSON. Mr. President, in view of the statements which have been made this morning, I think it is proper to say that when the amendment of the Senator from Ohio [Mr. FORAKER] was before the Senate the other day it included three propositions: A prohibition against the issuance of free passes; a prohibition against the issuing of commutation tickets or reduced fares, and also a prohibition which might have been construed, and which some of us did construe, as affecting local questions in the South which we did not desire raised in the Senate. The object of my amendment was to confine the question to the issuance of free passes only. In drafting that amendment, as I did here in the Senate with a pencil very hastily, although the words "and their families" were written in in pencil in some way they were stricken out, probably at the suggestion of somebody, or probably inadvertently by myself, and on yesterday I offered a substitute, after having entered the motion to reconsider, and stated that, if the motion to reconsider were adopted by the Senate, I would offer the substitute in lieu of the amendment.

In addition to that, Mr. President, I desire to say, in view of

the suggestion of the Senator from Indiana [Mr. BEVERIDGE], that I intended to modify that further by adding:

Provided, That this provision shall not be construed to prohibit the interchange of passes for officers, employees, and members of the families of employees.

Undertaking, if I can, to cover—and it will be covered—absolutely and thoroughly that phase of the question when the motion to reconsider comes up and this substitute which I have proposed is taken up for consideration.

Mr. CLAPP. Mr. President, I rise to a parliamentary inquiry.

The VICE-PRESIDENT. The Senator from Minnesota will state his parliamentary inquiry.

Mr. CLAPP. My inquiry is as to the situation, whether or not it would be in order to grant unanimous consent for the reconsideration of the amendment offered by the Senator from Texas [Mr. CULBERSON]? I think there is no question, and there is not a Senator in this room but realizes that the vote by which that amendment was passed should be reconsidered. We have got to meet the question at some time, and it will save an immense amount of embarrassment, it seems to me, if it can be disposed of now.

Mr. CULLOM. Mr. President, it seems to me that we ought to go on in regular order. The Senator from Iowa [Mr. ALLISON] offered an amendment a while ago which seems to have been almost lost sight of.

The VICE-PRESIDENT. Replying to the suggestion of the Senator from Minnesota [Mr. CLAPP], the Chair thinks it is competent for the Senate, by unanimous consent, to return to any order that has been passed; but one objection would, of course, prevent doing so.

The question is on agreeing to the amendment proposed by the Senator from Iowa [Mr. ALLISON].

Mr. DANIEL and Mr. OVERMAN. Let it be read.

The VICE-PRESIDENT. The amendment will be again stated by the Secretary.

The SECRETARY. On page 10 of the printed bill, after the word "reasonable," in line 20, it is proposed to strike out the words "and fairly remunerative."

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ALLISON. I offer an amendment on page 11, line 5, after the word "prescribed," to strike out the remainder of the clause down to and including the word "carrier," in line 7, and to insert in lieu thereof what I have sent to the Secretary's desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from Iowa will be stated.

The SECRETARY. On page 11, line 5, after the word "prescribed," it is proposed to strike out:

Such order shall go into effect thirty days after notice to the carrier and shall remain in force and be observed by the carrier.

And in lieu thereof to insert the following:

All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Iowa, which has just been stated.

Mr. LA FOLLETTE. Mr. President, I should like to inquire of the Senator from Iowa why the limitation of two years is placed upon the orders of the Commission changing the rate?

Mr. ALLISON. The bill as it now stands has a limitation of three years. I should think that two years would suffice to test the value of the order, and, of course, if it is a valuable order, it will remain undoubtedly in process of execution by the railroads themselves. I do not think it is a very important matter; indeed, I have paid very little attention to this limitation. Two years seem to me to be long enough.

Mr. LA FOLLETTE. If I understand the purpose of the limitation, it is to annul the rate fixed by the Commission at the end of the period of two years and leave the railroad company free to restore the old rate or any other rate which it may choose to fix. In order that I may be speaking to something, Mr. President, I will move—

The VICE-PRESIDENT. The Senator is in order in speaking to the amendment proposed by the Senator from Iowa [Mr. ALLISON], which is pending.

Mr. LA FOLLETTE. Well, Mr. President, I will move to strike out the limitation of two years, which the amendment makes upon the rate fixed by the Commission, to the end that the Commission rate shall continue in force until the railway company shows that it should be changed.

The VICE-PRESIDENT. The Senator from Wisconsin pro-

poses an amendment to the amendment of the Senator from Iowa [Mr. ALLISON], which will be stated.

The SECRETARY. After the word "time," where it appears on line 8 of the printed amendment of Mr. ALLISON, it is proposed to strike out the words "not exceeding two years;" so that if amended it will read:

All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time and shall continue in force for such period of time as shall be prescribed in the order of the Commission.

Mr. LA FOLLETTE. Mr. President, after the Commission has made an investigation and determined that a given rate is reasonable, that rate should remain in force until it is shown to be an unjust and unreasonable compensation for the service rendered. I know of no reason why such rate should expire by limitation.

Mr. KNOX. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Pennsylvania?

Mr. LA FOLLETTE. I do.

Mr. KNOX. Mr. President, I only rise to interrupt the Senator from Wisconsin because he says that he has never heard any reason assigned for a limitation of the duration of the order of the Commission. I am very glad to state to him that in the original bill drawn by the Interstate Commerce Commission, which they submitted to the Interstate Commerce Committee, the suggestion of the Commission was that the order should only last and be continued in force for one year; and the letters addressed to the chairman of the committee, which I had the opportunity of reading, which accompanied that bill, stated that in the rapid changes in this country, and especially the changes that affected transportation and conditions upon which transportation rates are predicated, the initiative of the railroad ought to reattach every year. This amendment proposed by the senior Senator from Iowa [Mr. ALLISON] extends it to two years. I should favor two years, and I think it ought to stand at two years; but I quite agree with the statement made by Mr. Knapp, the chairman of the Interstate Commerce Commission, in his letter to the chairman of the Committee on Interstate Commerce, that there ought to be a period when the initiative ought to go back to the railroad company because of the changed situation which affects the question of rates and the question of practice as well.

Mr. LA FOLLETTE. I submit, Mr. President, after this Commission has gone over the ground, made an investigation, and fixed a rate, it ought not to be set aside at the end of a two-year period or at the end of any period unless that rate is found for some sufficient reason to be such a rate as ought no longer to be maintained. The Commission will be able to accomplish very little in fixing rates if the Commission's rates are to expire by limitation and the railroad rates be restored without any reason whatever for such change. I am very certain that the only reason why the Commission ever suggested such a limitation in the first draft of the bill which they proposed was because they believed that they could not at the present time secure broad and comprehensive legislation from Congress. If they could at this time be clothed with authority to determine rates upon their own motion, then, sir, I am sure they would not recommend a time limitation upon the rates fixed by the Commission. If this bill were amended in that important particular the Commission would have full authority to revise a rate upon their own motion, if justice to the carrier or the public required that it should be done. Rate making by the Commission upon complaint only will be a slow process at best. The work ought to stand, unless there is some good reason for setting it aside. If there is good reason for changing a rate once fixed by the Commission, it can be made to appear upon investigation.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Wisconsin [Mr. LA FOLLETTE] to the amendment of the Senator from Iowa [Mr. ALLISON].

The amendment to the amendment was rejected.

The VICE-PRESIDENT. The question recurs on the amendment proposed by the Senator from Iowa.

The amendment was agreed to.

Mr. BAILEY. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from Texas will be stated.

The SECRETARY. In section 4, page 11, line 9, after the word "jurisdiction," it is proposed to insert the following proviso:

Provided, however, That no order of the Commission shall be set aside or suspended by any preliminary or interlocutory decree or order of any court or judge.

Mr. BAILEY. Mr. President, in his message to Congress on the 6th of December, 1904, President Roosevelt indorsed the

principle and the purpose of this amendment in the most emphatic language. These were his words:

While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review. The Government must, in increasing degree, supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect, and to stay in effect unless and until the court of review reverses it.

It will be observed that the President was so deeply impressed with the importance of maintaining the Commission's rate "unless and until it is reversed by the courts" that he urges it twice in the same paragraph. Indeed, sir, only a single sentence separates his first from his second declaration, and the important words in both are precisely the same. It must have been a profound conviction that could lead a scholarly man to repeat himself in such close connection.

In his speech delivered at Raleigh, N. C., on the 19th of October, 1905, the President restated his position on the railroad question, and, while he modified it in another important respect, he made no change whatever in this respect. Here is what he said:

But, in my judgment, the most important thing to do is to give this administrative body power to make its findings effective, and this can be done only by giving it the power, when complaint is made of a given rate as being unjust or unreasonable, if it finds the complaint proper then itself to fix a maximum rate which it regards as just and reasonable, this rate to go into effect practically at once—that is, within a reasonable time—and to stay in effect until reversed by the courts.

In this statement the President abandons his first and sensible demand for an absolute rate and adopts the dangerous expedient of a maximum rate; but he still adheres with tenacious fidelity to his original insistence that the rate when once fixed by the Commission should remain in effect "until and unless reversed by the courts." Thus in a solemn message to Congress and again in a carefully prepared speech he has recognized that the only way in which the rate-making power of the Commission can be rendered most effective for the public protection was to keep the rate of the Commission in effect until it is reversed by the courts.

The President of the United States understands as well as any Senator in this body, and he understands as well as any citizen in this country, the difference between "suspending" and "reversing" an order of the Commission. He knows as well as I do—and I know as well as any living man can know—that "to suspend" is an intermediate process, while "to reverse" is a final determination of the case; and, therefore, when he declared that the rate of the Commission should "stay in effect until reversed by the courts," he meant precisely what I am now seeking to accomplish.

With these two recommendations before me, I had every right to assume that an amendment designed to carry them into effect would receive the President's cordial and active support; and yet recent events make it manifest that he has compromised again with the opponents of this legislation, and has committed both himself and his friends against a proposition which may be fairly described as his own. He assured, and then he reassured, his countrymen that he earnestly desires to keep the Commission's rate in effect until it shall be reversed by the court; and although I have found him an open and an easy way to reach that result, he refuses to follow it.

It must not be understood that in saying this it is my purpose to withhold from the President of the United States the credit to which he is justly entitled for this legislation. No hope of a partisan advantage can restrain me from admitting that, without his help, even this imperfect and insufficient bill could have never become a law; but while I cheerfully make that acknowledgment of his services, his best friends must sincerely deplore that he did not keep his face set resolutely against every effort to emasculate this bill. Whether he was weary of the conflict and surrendered, as some men charge, or whether he yielded to the appeals for party harmony, as other men believe, I do not pretend to judge. But whether it was the one or the other, or whether it was neither or both, he will find it difficult to explain to the American people why it is that he has raised their hope so high and then has fulfilled it in such slight degree.

Mr. President, I realize that the time for argument on this question is over, and that nothing which can now be said will

change the vote of any Senator; but before it passes entirely from our consideration I want to incorporate in the Record the latest expression which I have been able to find from law books on this subject. It is from a recent work—so recent that, though I had purchased it on approval, I had not, for the want of time, examined it, and it was called to my attention by a distinguished lawyer who formerly represented a Georgia district in the House of Representatives. It is entitled "Federal Statutes Annotated," and consists of 10 volumes. The eighth and ninth volumes are devoted to a consideration of the Constitution by sections, and in the eighth volume I find a chapter dealing with the power of Congress to create inferior Federal courts. I find that this work refers, just as I did in my speech, the power to create these courts, not to the judiciary clause of the Constitution, but to that provision which authorizes Congress "to constitute tribunals inferior to the Supreme Court," and lays down the law as follows:

This section—

After quoting the section to which I have referred—

This section delegates power to Congress to organize courts, and therein delegates to Congress power both to authorize the issue and to suspend the issue of the writ of habeas corpus, because that is a judicial writ, and the power to organize courts includes the power of determining what writs they may issue, or not issue, from time to time; hence it was necessary to place the restriction upon the power thus delegated to Congress to legislate for the courts which is contained in section 9, viz, that Congress should not, in so legislating, withhold from them the right to issue the well-known judicial writ of habeas corpus, except, etc.

Mr. President, if the Congress possesses the power to prevent a preliminary injunction suspending the Interstate Commerce Commission's order, surely it can not excuse itself for failing or refusing to exercise that power to the fullest extent. That the injunctive power of the courts ought not to be heedlessly or unnecessarily curtailed, I might freely grant without abating my support of this amendment. A controversy between two individuals or a controversy between a body of individuals and a corporation does not present the question which confronts us here. In these cases there will have been no ascertainment of the facts, no careful opinion rendered by a Government tribunal, as in the case of a rate fixed by the Commission, to be suspended without a due and full inquiry. The rate of the Commission when once established becomes the law of the land, and it is a monstrous proposition to allow inferior judges to suspend the law of the land without a full and complete inquiry.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Texas [Mr. BAILEY].

Mr. BERRY and Mr. BLACKBURN demanded the yeas and nays, and they were ordered.

The Secretary proceeded to call the roll.

Mr. SPOONER (when his name was called). I have a general pair with the Senator from Tennessee [Mr. CARMACK], and therefore am not at liberty to vote. I understand if he were present, he would vote "yea." If I were permitted to vote, I should vote "nay."

Mr. WARREN (when his name was called). I have a general pair with the senior Senator from Mississippi [Mr. MONEY]. I do not see him in the Chamber. If permitted to vote, I should vote "nay."

The roll call was concluded.

Mr. TELLER. My colleague [Mr. PATTERSON] is paired with the junior Senator from Idaho [Mr. HEYBURN]. If present, he would vote "yea."

Mr. SPOONER. The Senator from Ohio [Mr. DICK] is not present, and if there is no objection, I will transfer to him my pair with the Senator from Tennessee [Mr. CARMACK], and will vote. I vote "nay."

The result was announced—yeas 23, nays 54, as follows:

YEAS—23.

Bailey	Dubois	Latimer	Rayner
Berry	Foster	McCreary	Simmons
Blackburn	Frazier	McEnery	Stone
Burkett	Gearin	McLaurin	Teller
Clarke, Ark.	Hale	Martin	Tillman
Clay	La Follette	Overman	

NAYS—54.

Aldrich	Crane	Hansbrough	Penrose
Alger	Culberson	Hemenway	Perkins
Allee	Cullom	Hopkins	Pettus
Allison	Daniel	Kean	Piles
Ankeny	Dillingham	Kittredge	Platt
Bacon	Dolliver	Knox	Scott
Beveridge	Dryden	Lodge	Smoot
Brandegee	Elkins	Long	Spooner
Bulkeley	Flint	McCumber	Sutherland
Burrows	Foraker	Millard	Taliaferro
Carter	Frye	Morgan	Warner
Clapp	Fulton	Nelson	Wetmore
Clark, Mont.	Gallinger	Newlands	
Clark, Wyo.	Gamble	Nixon	

NOT VOTING—12.

Burnham
Burton
CarmackDepew
Dick
GormanHeyburn
Mallory
MoneyPatterson
Proctor
Warren

So Mr. BAILEY's amendment was rejected.

Mr. CULBERSON. Mr. President, I offer what I send to the desk as an amendment to the amendment. It is the part between the marked lines.

Mr. MONEY. Mr. President—

Mr. CULBERSON. I yield to the Senator from Mississippi.

Mr. MONEY. Mr. President, I wish to say that I was detained in a committee room and did not get here in time to vote on the proposition last voted upon. I should be glad to be recorded. My pair is the Senator from Wyoming [Mr. WARREN], and I ask unanimous consent of the Senate that I be allowed to vote.

Mr. WARREN. In that case I ask that I be recorded, also.

Mr. GALLINGER. Mr. President, I raise the point of order that under the rules the Senators can not be recorded.

The VICE-PRESIDENT. The vote having been announced, under the rules the Senators are precluded from recording their votes.

Mr. MONEY. Then I ask permission of the Senate to say how I would have voted.

The VICE-PRESIDENT. The Senator from Mississippi.

Mr. MONEY. I would have voted "yea" if I had been present.

The VICE-PRESIDENT. The Senator from Texas [Mr. CULBERSON] proposes an amendment, which will be stated.

Mr. CULBERSON. As an amendment to the amendment of the Senator from Iowa.

The VICE-PRESIDENT. The amendment of the Senator from Iowa having been agreed to, the Chair is of opinion that the proposed amendment of the Senator from Texas is not in order at the present stage of the bill.

Mr. CULBERSON. Mr. President, it has not been agreed to; and I offer this amendment to the amendment.

Mr. ALLISON. It has not been agreed to. I wish to modify the amendment by inserting after the word "time," where it occurs the first time, the words "not less than thirty days."

Mr. ALDRICH. I understood that this amendment had been agreed to.

Several SENATORS. No!

The VICE-PRESIDENT. The Senator from Texas [Mr. CULBERSON] rose to offer an amendment to the amendment of the Senator from Iowa [Mr. ALLISON], and the only amendment that has been proposed by the Senator from Iowa has been agreed to. But the Chair now understands that the Senator from Texas rose to amend an amendment which has not been formally offered. The Senator from Iowa proposes the following amendment—

Mr. ALLISON. Mr. President—

Mr. NELSON. I rise to a point of order.

The VICE-PRESIDENT. The Senator from Minnesota will state his point of order.

Mr. NELSON. The amendment of the Senator from Iowa was adopted, and we took up the amendment of the Senator from Texas [Mr. BAILEY].

The VICE-PRESIDENT. That is correct.

Mr. NELSON. That is the status of the case. Now, we can not take up the amendment of the Senator from Iowa without reconsidering the vote by which it was agreed to.

Mr. ALLISON. Very well.

Mr. CULBERSON. I rise to a point of order.

The VICE-PRESIDENT. The Senator from Texas will state his point of order.

Mr. CULBERSON. The first amendment offered by the Senator from Iowa was adopted.

The VICE-PRESIDENT. That is correct.

Mr. CULBERSON. It was to strike out the words "and fairly remunerative." The other amendment, at the bottom of page 310, has not been adopted.

The VICE-PRESIDENT. It has been agreed to.

Mr. CULBERSON. Then I offer the amendment I send to the desk.

The VICE-PRESIDENT. Is it an amendment to the amendment already agreed to?

Mr. CULBERSON. It is an amendment to that section, to follow the amendment of the Senator from Iowa.

The VICE-PRESIDENT. If it follows the amendment and is not an amendment to the amendment, it is in order.

Mr. CULBERSON. It is not an amendment to the amendment. I offer it in any form, to get it in order.

Mr. CULLOM. I rise to a point of order.

The VICE-PRESIDENT. The Senator from Illinois will state his point of order.

Mr. CULLOM. If the Senator means that the amendment to strike out the words "and fairly remunerative" was not agreed to, he is mistaken.

Mr. CULBERSON. I stated the very opposite.

The VICE-PRESIDENT. The words "and fairly remunerative" were stricken out upon a vote of the Senate.

Mr. CULLOM. Exactly. That is what I said.

The VICE-PRESIDENT. The Senator from Texas offers an amendment. Where shall it be inserted?

Mr. CULBERSON. I am still of the opinion that the amendment of the Senator from Iowa [Mr. ALLISON], at the bottom of page 310, has not been adopted, because the amendment of my colleague was an amendment to that amendment.

Mr. BAILEY. Mr. President, that is a mistake. I offered an amendment to the bill.

Mr. CULBERSON. Very well. Then I offer the amendment I send to the desk, to follow the amendment offered by the Senator from Iowa.

Mr. ALDRICH. Let it be reported.

The VICE-PRESIDENT. The Secretary will read the amendment proposed by the Senator from Texas.

The SECRETARY. On page 11 of the bill, at the end of line 9, after the word "jurisdiction," it is proposed to insert the following:

Provided, That if such rate so fixed by the Commission is in violation of the rights of any party in interest secured by the Constitution of the United States the party so affected may proceed against the Commission by appropriate proceedings in equity in any circuit court of the United States of competent jurisdiction to enjoin the enforcement of such order and rate: *Provided further*, That in determining what is a just and reasonable rate no consideration shall be given fictitious stock issued by the carrier, or bonds or other obligations of the carrier, issued in excess of the fair value of its property: *Provided further*, That no circuit or other court of the United States, and no judge thereof in vacation, shall annul, restrain, enjoin, or otherwise interfere with the enforcement or operation of a rate and order established and made by the Interstate Commerce Commission provided for in this act until a petition, declaration, bill of complaint, or other proper statement of the cause of action is filed in said court or presented to said judge in vacation and the Interstate Commerce Commission is duly and legally served with a copy thereof at least ten days prior to any action taken by the court or judge thereon and until said Commission has had opportunity within said ten days to answer by proper pleadings and present testimony in like form as the complainants therein: *Provided further*, That in such proceedings either party to the suit may appeal immediately and directly to the Supreme Court of the United States from the final decree therein, or from any interlocutory or preliminary restraining order therein, whether granted during the term or in vacation, by which the rate and order so established and made by the Commission is enjoined in whole or in part: *Provided further*, That said appeal must be taken within thirty days from the entry of such order or decree, and said case so appealed shall be advanced and take precedence in the Supreme Court of all cases of a different character therein: *Provided further*, That the circuit court, or the judge thereof, or the Supreme Court, or any justice thereof, may direct that the final decree or the interlocutory or preliminary restraining order, from which an appeal is taken, shall be stayed during the pendency of such appeal.

Mr. BAILEY. Mr. President, inasmuch as the Senate has declined to prevent preliminary injunctions entirely, I sincerely hope they will agree to prevent them until there is a hearing. Of course I can not understand the principle which denies to Congress the power to prevent them until the hearing, and yet concedes the power of Congress to prevent them until a hearing. Why all this difference should be between "a" and "the" is beyond my comprehension, but I certainly hope the Senate will at least restrain the court some.

Mr. CARTER. Mr. President, lest my vote upon this amendment should be misunderstood, permit me to say a word. I believe that the Senate, without involving the question in as extensive verbiage as this amendment contains, will in due time provide that no interlocutory order shall be issued until notice is given the Interstate Commerce Commission and a hearing had upon the application for the restraining order or temporary injunction. From the very beginning of this discussion I have insisted, with proper regard for the bill, that amendments should be confined to the narrowest possible scope. This bill in the beginning was prepared with great care. The first draft was made, I believe, by experts who had been working with interstate-commerce traffic for years. Subsequently the bill was given most patient and long-continued consideration in the Committee on Interstate Commerce in the House of Representatives, approved by the Attorney-General of the United States, after a thorough examination, and it is approved, I believe, by a majority of this body.

It occurs to me, as it has occurred to me in the beginning, that extensive amendments should not be encouraged. If aught was needed to demonstrate the wisdom of that position, the confused and confusing debate which occurred in the Chamber this morning on the antipass amendment of the Senator from

Texas considered here anew, amidst a shower of protesting telegrams, should have furnished the Senate a demonstration that its hands in open session had better be kept off any hastily drawn amendment to the bill.

The amendment of the Senator from Texas was presented with the best possible intent, but even with all the amendments suggested to that amendment here this morning, in the light of admonition from persons from Maine to California and from the Lakes to the Gulf, it would still be a poor measure if adopted. I am prepared to make a half dozen suggestions, which I think the Senate will readily concede are founded in good sound policy, to the amendment of the Senator from Texas.

Now comes another amendment, extensive in verbiage, covering a variety of topics, no doubt, read for the first time from the desk, and we are called upon to vote for it because, forsooth, it contains the little virtue of providing that notice shall be given and a hearing had before a restraining order is issued. These points will be found carefully presented and guarded in a brief amendment to be offered by the Senator from Iowa [Mr. ALLISON].

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Texas?

Mr. CARTER. Certainly.

Mr. CULBERSON. I call the attention of the Senator from Montana to the fact that the provisions of the amendment proposed by me have been before the Senate in various forms, and the Senator will find the amendment printed, May 7, pages 284 and 285 of the printed pamphlet. It was here in ample time for consideration by the Senate.

Mr. CARTER. That reference furnishes but another evidence of the virtue of the contention I have made from the beginning. This bill in itself consists of 26 pages. We have presented for consideration to the Senate 320 pages of amendments, besides additional amendments presented from time to time, not included in this bound pamphlet. Will you tell me, I pray, what sort of a bill this will be if these amendments, good, bad, and indifferent, are adopted and attached to or injected into the bill?

Mr. President, the closer we adhere to the original text of the bill the nearer we will be to procuring a logical piece of legislation, destined to accomplish the primary purpose, to wit, the vesting of power in the Interstate Commerce Commission to substitute a reasonable rate for an unreasonable rate. I shall vote against this amendment because it is too extensive, covers too many questions, and is calculated to confuse rather than to strengthen the primary purpose of the bill.

Mr. NELSON. Mr. President, we all know that the Senator from Iowa [Mr. ALLISON] has been suffering from illness for several days past. He is in the Chamber to-day for the purpose of offering certain amendments which have been prepared by him. I suggest to Senators that we allow this bill to be read right along by sections, and that we all abstain from offering our amendments for the time being, to the end that the Senator from Iowa may offer his amendments and have them acted upon. We can always go back to the bill, even if the whole of it is read, and amend it in Committee of the Whole. I trust the Senator from Texas will be good enough to withdraw, for the time being, his amendment and allow the Senator from Iowa to offer his amendments.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Texas [Mr. CULBERSON].

Mr. CULBERSON. On that I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. PROCTOR (when his name was called). I again announce my pair on all votes on this measure with the senior Senator from Florida [Mr. MALLORY].

The roll call was concluded.

Mr. SPOONER. I again announce my pair with the Senator from Tennessee [Mr. CARMACK]. If I were permitted to vote I should vote "nay."

The result was announced—yeas 29, nays 50, as follows:

YEAS—29.

Bacon	Dubois	McLaurin	Simmons
Berry	Foster	Martin	Stone
Blackburn	Frazier	Money	Talliaferro
Clark, Mont.	Gearin	Morgan	Teller
Clarke, Ark.	La Follette	Newlands	Tillman
Clay	Latimer	Overman	
Culbertson	McCreary	Pettus	
Daniel	McEnery	Rayner	

NAYS—50.

Aldrich	Allison	Brandegee	Burnham
Alger	Ankeny	Bulkeley	Burrows
Allee	Beveridge	Burkett	Carter

Clapp	Foraker	Kittredge	Piles
Clark, Wyo.	Frye	Knox	Platt
Crane	Fulton	Lodge	Scott
Cullom	Gallinger	Long	Smoot
Dick	Gamble	McCumber	Sutherland
Dillingham	Hale	Millard	Warner
Dolliver	Hansbrough	Nelson	Warren
Dryden	Hemenway	Nixon	Wetmore
Elkins	Hopkins	Penrose	
Flint	Kean	Perkins	

NOT VOTING—10.

Bailey	Depew	Mallory	Spooner
Burton	Gorman	Patterson	
Carmack	Heyburn	Proctor	

So Mr. CULBERSON's amendment was rejected.

Mr. BACON. I offer an amendment, to come in after the word "jurisdiction," at the same place as the amendment just proposed by the Senator from Texas [Mr. CULBERSON].

The VICE-PRESIDENT. The amendment proposed by the Senator from Georgia will be read.

The SECRETARY. On page 11 of the regular bill, at the end of line 9, insert:

No rate or charge, regulation or practice, prescribed by the Commission shall be restrained, set aside, suspended, or modified by any interlocutory or preliminary order or decree of the court unless upon the hearing, after such full notice to the Commission as herein prescribed, the same shall be considered and concurred in and ordered by at least two judges presiding in said hearing, at least one of whom shall be a judge of the circuit court of the United States or a circuit justice of the Supreme Court of the United States.

Mr. BACON. Mr. President, I ask that the Secretary indicate the page in order that Senators may turn to it.

The SECRETARY. Page 235 of the large pamphlet.

Mr. TELLER. Where does it come in the bill?

Mr. BACON. At the same place as the last amendment.

The SECRETARY. At the end of line 9, page 11, of the bill.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Georgia [Mr. BACON].

Mr. BACON. Mr. President, I think this is a very important amendment, and I trust it may receive the careful consideration of Senators. I am as anxious as anyone that there shall be no improvident or hasty or ill-advised interference with any order of the Commission fixing rates after complaint made. I desire most earnestly that the orders of the Commission shall go into effect and remain in effect unless the constitutional rights of parties require that they be suspended. I was constrained to vote against the amendment which prohibited under any circumstances the issuance of an interlocutory order or decree, because, in my judgment, such a provision in this bill would be unconstitutional, and so believing, under my obligation I could not vote otherwise.

I will simply pause long enough to say that the ground upon which I base my conclusion as to the unconstitutionality of such provision is not that the Congress has no right under any circumstances to control and prohibit the exercise of the writ or process of injunction. In my opinion there are some circumstances where Congress can do so, and that in other circumstances it has no constitutional power to do so. I base my opinion that Congress can not constitutionally do so in this particular case upon the belief that Congress can not control and prohibit the exercise by the courts of the process of injunction in the proposed law, if that process of injunction is the only one by the exercise of which by the courts the provisions of the fifth amendment to the Constitution of the United States can be made of force and effect. Unless this constitutional provision can be enforced by the courts it is simply a piece of waste paper. I hold that Congress does not have the right, if that is the only process of the courts by which the fifth amendment can be made of force and effect, to destroy that only remedy and thus nullify that most important and vital constitutional provision. It is the duty of Congress to so legislate as to make effective the provisions of the Constitution. I feel it due to myself to state that much. If there is any other process by which the courts can perfectly protect the citizen in the guaranties of the fifth amendment, I do not know what it is. Of course I will not undertake to go into the argument or to elaborate it. In my opinion Congress can prohibit the exercise of the process of injunction when such prohibition is to prevent its being used to imperil or destroy personal liberty or property rights. I do not believe that Congress can prohibit the exercise of the process of injunction when such exercise is essential for the protection of personal liberty or of the rights of property guaranteed by the Constitution.

I wish to direct the attention of the Senate, however, to the provisions of the particular amendment I now offer.

Mr. ALDRICH. Will the Senator from Georgia permit me?

Mr. BACON. With pleasure.

Mr. ALDRICH. I make the suggestion to the Senator from Georgia that he offer his amendment to the amendment which

the Senator from Iowa [Mr. ALLISON] is going to offer to the next section. It is the same subject-matter exactly and covers substantially the same ground.

Mr. BACON. The purpose I have in offering it now is that the subject-matter has been brought to the attention of the Senate in the amendment we have just voted on, denying the right to issue any preliminary injunction, and I desire that this shall come in the same connection.

Mr. ALDRICH. The Senator from Iowa has already given notice that he will offer an amendment to the next section covering the question of preliminary injunction, and I suggest to the Senator, if it is equally agreeable to him, to offer his amendment to that amendment.

Mr. BACON. I prefer to offer it here.

Mr. ALDRICH. All right.

Mr. BACON. Mr. President, there is undoubtedly a great evil found frequently in the practice of the courts in the improvident grant of interlocutory or preliminary injunctions, and it is intended in this very grave and important matter, as the right is still to be exercised by the court, to throw around it all possible safeguards, so that there shall be no hasty, no ill-advised, no improvident grant of an injunction, and to guard against the possibility—I use the word “possibility” because it is the most extreme word—to guard against the possibility of any judge being influenced by any but the highest motives or having the opportunity to act when influenced by any but the highest motives in the administration of justice.

Mr. President, I ask Senators to consider carefully this question. It is a well-recognized feature of the circuit courts of the United States that more than one judge presides in the determination of questions. It is not a requirement of the law that more than one shall preside in the consideration and determination of questions, but it is a provision in much wisdom which permits and authorizes the consideration of questions by not only two judges but by three judges sitting together upon the circuit bench.

Mr. President, that is not done as a reflection upon any one judge or as an evidence of distrust in any one judge. It is done because it is recognized that in the multitude of counsel there is wisdom. It is done for the same reason that we put nine judges upon the Supreme Bench, not that there is distrust of any one of the nine, but that in the consideration of the grave questions which must necessarily come before that court there shall be the advantage to be gained in the coming together of a number of minds in the consideration of the same question. And further, if there is a question of grave doubt and difficulty where men may differ, that there may be among so large a number of judges the opportunity for a majority to decide aright.

Mr. President, I beg that Senators will consider this situation. Here is the very gravest of questions, one of the most far-reaching. Under the law as it now exists, any district judge in the United States is authorized to exercise circuit court powers. With the right to pass upon the question of a preliminary injunction, in the absence of some such provision as this it will be competent for any district judge in the United States to arrest the order of the Commission by an interlocutory order or decree.

This provision does not simply ask that more than one judge shall be called upon and shall concur with the judge before an interlocutory decree can be issued, but it provides that at least one of them shall be a circuit judge of the United States. In other words, it can not be done even by two district judges. It may be done by one district judge and one circuit judge, or one circuit justice of the Supreme Court of the United States. Under our system the judges of the Supreme Court of the United States exercise circuit court powers and sit on the circuit court. Therefore the amendment provides that before an interlocutory order or decree may issue there must be two judges who shall concur in the order, and that at least one of them shall be a circuit judge or a circuit justice of the Supreme Court of the United States.

Mr. FULTON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Oregon?

Mr. BACON. With pleasure.

Mr. FULTON. I call the attention of the Senator from Georgia to the fact that under the amendment proposed by the Senator from Iowa it will require that three judges shall sit and hear the application for an injunction under the expediting act.

Mr. BACON. I have no objection to the number being made three.

Mr. FULTON. I ask the Senator if he does not think it better really to place it under the expediting act by an independent provision?

Mr. BACON. But the expediting act is not the law under which the interlocutory decree will be issued.

Mr. FULTON. The amendment of the Senator from Iowa proposes to apply it.

Mr. BACON. On what page is the amendment to which the Senator refers?

Mr. FULTON. On page 319, lines 9 and 10, of the latest print of the amendments. The original text reads:

The provision of an act to expedite the hearing and determination of suits—

Mr. BACON. There is nothing said there about interlocutory decrees.

Mr. FULTON. Yes; if the Senator will look at line 9:

Including the hearing on an application for a preliminary injunction.

The Senator would not want to require that all interlocutory orders and decrees should be heard before three judges or even two judges?

Mr. BACON. The amendment offered by me does not provide that there shall be two for any and all interlocutory orders or decrees, but does provide that there shall be two in all interlocutory orders or decrees which suspend the order of the Commission. That is the scope of it.

Mr. FULTON. This provides that there shall be three.

Mr. SPOONER. Will the Senator allow me a moment?

Mr. BACON. Certainly.

Mr. SPOONER. I take it that was not intended to apply to a great many orders made in the progress of an equity suit, orders to take testimony and formal orders that ought not to require three judges.

Mr. BACON. The provision does not call for anything of the kind. It expressly limits this requirement to the case of an order suspending the order of the Commission. It does not go any further than that. I will read it again for the Senator.

No rate or charge, regulation or practice prescribed by the Commission shall be restrained, set aside, etc.

Mr. FULTON. What amendment is the Senator reading from?

Mr. BACON. I am reading from my amendment.

I hope Senators will not misunderstand that. The amendment is in print before them, and it is limited in its scope entirely to the restraining, setting aside, suspending, or modifying any rate or charge, regulation or practice made by the Commission and does not refer in any manner to any other interlocutory order or decree. It relates to them solely.

If the Senator from Oregon will pardon me for a moment, he calls my attention to the proposed amendment of the Senator from Iowa [Mr. ALLISON], which is found on page 318 of this compilation, which I will read, and which will be offered by him later. I read it for the purpose of ascertaining whether or not it is true, as suggested by the Senator from Oregon, that the provision which I seek to have incorporated is already included in this proposed amendment. The amendment which is going to be proposed by the Senator from Iowa, which is found on page 318, is as follows:

Provided, That no injunction, interlocutory order, or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing—

Mr. LONG. That is not the amendment.

Mr. BACON. That is the one I was referred to.

Mr. LONG. It is on the same page, lines 9 and 10.

Mr. BACON. Oh, yes; “The provisions of an act to expedite”

Mr. FULTON. Those are the lines to which I called the attention of the Senator.

Mr. BACON. I beg pardon.

The VICE-PRESIDENT. The Chair is obliged to inform the Senator from Georgia that his time has expired.

Mr. BACON. I am sorry that I was interrupted and that I was not permitted to present in full the argument in favor of the amendment.

Mr. DUBOIS obtained the floor.

Mr. ALLISON. Mr. President, I desire to reply briefly to the suggestions made by the Senator from Georgia. Have I the floor?

The VICE-PRESIDENT. The Senator from Idaho has the floor.

Mr. DUBOIS. I yield to the Senator from Iowa, but I do not want to have his remarks taken out of my time.

The VICE-PRESIDENT. The Chair will recognize the Senator from Idaho next.

Mr. ALLISON. As I understand the amendment now proposed by the Senator from Georgia, it is an amendment intended to meet the situation as respects injunctions, and that question is also met by certain amendments which I have proposed to the bill. I believe that sufficient safeguards are thrown around

these amendments, and that they are to be preferred really to the amendment proposed by the Senator from Georgia.

The bill as it came to us from the House incorporated in its provisions what is known as the "expediting act" of February 11, 1903. So if we had not dealt with this question at all, the present status of the law on that subject is such that all these applications for injunctions would have gone to the circuit court, and there would have been three judges assigned to the hearing, as I understand the expediting act of 1903.

Mr. TELLER. Yes; that is right.

Mr. ALLISON. Three judges would be assigned, two of whom must be circuit judges. So if nothing had been done in the Senate upon that subject, the bill as it came to us from the House would have brought these preliminary injunctions under the provisions of the expediting law of 1903, as I understand it.

Mr. STONE. Will the Senator allow me to ask him a question for information?

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Missouri?

Mr. ALLISON. I yield to the Senator.

Mr. STONE. As I understand it—and I ask the Senator if I am correct in the opinion—the "expediting act," so called, will not apply or be operative in any of these proceedings until the Attorney-General shall file the statement that it is of public importance, and so on, required by that expediting act.

Mr. ALLISON. That is true.

Mr. STONE. Suppose he does not do that?

Mr. ALLISON. He is required to do it by the bill under consideration.

Mr. STONE. Absolutely?

Mr. ALLISON. Yes; it is made his duty to do it. Under the bill as it came to us from the House it was assumed, at least, that all the provisions respecting injunctions were already provided for; but now, to make it absolutely certain that there could be no difference of opinion upon it, there is an amendment inserted on page 10 whereby it is proposed to incorporate into the House provision these words:

The provisions of "An act to expedite the hearing and determination of suits in equity, etc.," approved February 11, 1903, shall be, and are hereby, made applicable to all such suits.

Then the amendment proposed by the Senator from Illinois [Mr. CULLOM] on my behalf the other day added the words "including the hearing on an application for a preliminary injunction." So there can be no question about the application of this statute to these injunction proceedings.

I submit to the Senator from Georgia that the provisions in the following pages in section 5 of the bill cover the entire case of injunctions—preliminary, interlocutory, and otherwise—in what I think a much safer way than is proposed by his amendment, and it provides also for an appeal directly to the Supreme Court in these cases and for the expediting of the cases in the Supreme Court.

Mr. BACON. I should like to ask the Senator from Iowa a question, with his permission.

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Georgia?

Mr. ALLISON. Certainly.

Mr. BACON. I am not at all anxious that my particular amendment shall be adopted.

Mr. ALLISON. So I understand.

Mr. BACON. All I want is the assurance from the Senator that when we come to that provision which he says now covers it, if necessary the Senator will be willing to insert either two or three judges, as he may see fit, so as to make it beyond doubt that there will be a requirement for either two or three judges to concur in an order before an interlocutory decree can be issued restraining or setting aside or modifying the order of the Commission. If I have that assurance from the Senator, I will be content.

Mr. ALLISON. I understand that these provisions provide for three judges, and if they are not so provided for certainly, I believe that that provision should be inserted.

Mr. BACON. Very well. With that assurance from the Senator I am perfectly willing that it be passed until we reach that point in his amendment.

Mr. NEWLANDS. Mr. President—

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Nevada?

Mr. ALLISON. I will yield to the Senator from Nevada. I yield, however, to the Senator from Idaho first.

Mr. NEWLANDS. I understand the Senator from Idaho [Mr. DUBOIS] is to take the floor in his own right.

The VICE-PRESIDENT. The Senator from Idaho wishes to take the floor in his own right.

Mr. NEWLANDS. I should like to call the attention of the

Senator from Iowa to the fact that the act for the expedition of suits is only to be set in motion upon the application of the Attorney-General.

Mr. ALLISON. Certainly.

Mr. NEWLANDS. When he files a certificate?

Mr. ALLISON. Certainly.

Mr. NEWLANDS. Whereas the amendment of the Senator from Georgia absolutely requires two judges in every case.

Mr. ALLISON. Under this bill it is made the duty of the Attorney-General to make that certificate on every occasion.

Mr. STONE. Where is that provision?

Mr. FULTON. On the same page—page 318.

Mr. ALDRICH. In lines 15, 16, and 17.

Mr. NELSON. Will the Senator from Iowa allow me to interrupt him? I want to call his attention to these words in the bill—

Mr. ALDRICH. If the Senator will excuse me, I understood the Senator from Georgia to withdraw his amendment.

Mr. BACON. No; I did not.

Mr. NELSON. I wish to call the attention of the Senator from Iowa, if he will allow me, to the language of the bill which makes it mandatory.

Mr. DUBOIS. Mr. President, I think I have the floor; and I rise to address myself to the amendment of the Senator from Georgia which is pending.

The VICE-PRESIDENT. The Chair understood the Senator from Idaho to yield the floor to the Senator from Iowa.

Mr. DUBOIS. To the Senator from Iowa, not to other Senators.

The VICE-PRESIDENT. The Senator from Iowa has yielded to other Senators.

Mr. DUBOIS. I do not want to be discourteous, but as I understand it the discussion is drifting away from the proposition to which I desire to address myself. The Senator from Minnesota is now calling attention—

Mr. NELSON. I was not taking the floor in my own right. I simply rose to make a suggestion to the Senator from Iowa, if he will allow me.

Mr. ALLISON. I will with great pleasure.

Mr. NELSON. I call his attention to this mandatory language in line 15, on page 318 of the pamphlet amendments. I read it in response to the question of the Senator from Nevada [Mr. NEWLANDS]:

It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting act of February 11, 1903.

It is made the duty of the Attorney-General positively by the bill as it came from the House to file that expediting request. So it covers exactly what the Senator from Georgia aims at.

Mr. ALLISON. Now I yield to the Senator from Idaho.

Mr. DUBOIS. Mr. President, I shall vote for any proposition to make it difficult for the courts to overturn the orders of the Commission. I think the orders of the Commission should stand until there is a final decree. I voted with pleasure for the amendment offered by the junior Senator from Texas [Mr. BAILEY] which restrained the courts from enjoining rates fixed by the Commission. I voted for the amendment offered by the senior Senator from Texas [Mr. CULBERSON] as a second choice. I shall vote for the amendment offered by the Senator from Georgia [Mr. BACON], although we may find ourselves in great difficulty when we multiply the number of judges who shall hear the preliminary order or injunction.

There is one case that seems to have escaped the attention of the lawyers of this Chamber. If we find such conditions now as existed when this cause was heard, you will find it difficult to get a decision from the court. The Joint Traffic Association, having its offices chiefly in the southern district of New York, was violating the interstate-commerce law in that by an arrangement a majority of those railroads (32 in number) who belonged to the association could fix a rate. The association was to announce a rate on the 1st day of January, 1906. They were enjoined, or attempted to be, by the United States attorney for the southern district of New York from putting the rate into effect because they were violating the United States law against "pooling." There are eight judges in that circuit, and it was found when they went before Judge Lacombe for the injunction that he could not hear the case because he owned stocks or bonds in one of the railroads; and it was also ascertained that every one of those judges in the southern district of New York was in the same predicament, save and except the district judge in Vermont—Judge Wheeler. You could not have gotten three judges in that situation to try the case. They finally had it heard in the district court of Vermont before Judge Wheeler, and he would not listen to the appeal and dismissed the suit of the Interstate Commerce Commission after

four days' oral argument and filed his decision dismissing the bill on May 28, 1896. From that decision an appeal was taken by the United States to the circuit court of appeals for the second circuit—i. e., New York City.

In the meantime Judge Lacombe had become qualified, because he had sold his stocks and bonds. That made him eligible to sit. I presume that the other judge had become eligible on the same account, because William J. Wallace and Henry E. Lacombe, the judges, both sat, although both were disqualified when the suit was brought, and they affirmed the decision of the district judge in Vermont on March 19, 1897, but rendered no opinion. (See 89 Fed. Rep., 1020.)

The United States, through United States District Attorney Wallace McFarlane, then took the appeal to the Supreme Court of the United States. In one year and nine months afterwards the Supreme Court of the United States overturned both of the inferior courts. (See 171 U. S., 505.)

I am afraid that we may get into difficulty if we increase the number of judges, although I shall vote for the amendment offered by the Senator from Georgia. My opinion is that a commission selected as I think this Commission will be, is more apt to do justice to the shipper and the carrier than the courts, and my opinion is that very little should be left to the courts except as to the constitutionality of the law and as to whether the Commission has exceeded its power in interpreting the law.

I do not know whether it is the general rule that judges all over the United States are in the condition in which they were in the southern district of New York, where they could not sit on these cases, but I do know that we are the men who really select the United States judges. There is scarcely one of us who has not been instrumental in appointing a United States judge. I have very great respect for them, but they are men we select from among our political associates, and they do not become greatly superior the moment that we have selected them.

If the Interstate Commerce Commission to be appointed should be composed of shippers who have been injured by the railroad companies in the past, it would not be a fair commission, nor would it be a fair commission if it should be composed only of lawyers who have been in the employ of corporations; nor would it be a fair commission if it should be composed entirely of railroad men. I imagine it will be selected from all of these classes.

But I believe, on the other hand, that in the great majority of cases the judges of the inferior courts are selected from amongst lawyers who have been in the employ of corporations. I do not say they are dishonest. I do not mean to imply that they are, for I do not believe they are dishonest or intend to be partial; but their minds have run in those channels always, which render them friendly to the interests of the railroads, and they believe sincerely along certain lines which make them, in my opinion, less fit to judge fairly and honestly between the shipper and the carrier than would be this Commission.

This debate has been of great value, because it has demonstrated that we are listening to public sentiment. We have put many things into this bill which we would not have put into it two years ago. My opinion is, it will be no more effective than the Elkins law, and not much more effective than the present interstate-commerce law; and, if it is not, then I believe the people themselves will take charge of this whole subject and own the railroads of the country.

Mr. TELLER. Mr. President, I have voted for two propositions recognizing the right of Congress to some extent, at least, to control the deliberations of the courts upon these questions. I listened to the Senator from Georgia [Mr. BACON], who says that this amendment is very important. I presume it is. But, Mr. President, it is not more important than the amendment which the junior Senator from Texas [Mr. BAILEY] offered, and not nearly as simple; and it is, in my judgment, much more likely to get us into difficulty than that was, if we anticipate any difficulty from that.

I think it is the duty of every man, whenever he thinks a pending measure is unconstitutional, to vote against it. If I had believed that the amendment of the senior Senator from Texas [Mr. CULBERSON] was unconstitutional, I certainly should not have voted for it, for if the first amendment was unconstitutional, in my judgment as a lawyer the second was; and if I had believed the first was unconstitutional I should not be able to vote for the amendment of the Senator from Georgia.

Mr. President, the Senator from Iowa [Mr. ALLISON] has submitted an amendment. If I believed that the Constitution of the United States prohibited me from voting for the amendment offered by the junior Senator from Texas [Mr. BAILEY], I should not be able to vote for that amendment either. That amendment is a recognition of our right to control the courts. We have a law which now exists—though the Senator from Georgia

[Mr. BACON] thinks it does not have anything to do with this case—to which I wish to call attention, which is the act of February 11, 1903. If Senators will examine this bill, they will find on page 17 that it proposes to incorporate that act for all purposes into this bill, not verbatim, but it declares that it is to be in all respects applicable to all the cases brought under this proposed act. It will therefore become as much a part of this proposed act as if it had been incorporated word for word into the bill. That act reads:

That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, "An act to regulate commerce," approved February 4, 1887, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending.

That undoubtedly does give jurisdiction in a case brought under this act to a court consisting of three judges. It is a special court established for this very purpose by this act, and by this act, putting the two together.

I voted for the amendment offered by the senior Senator from Texas [Mr. CULBERSON]. I voted for it notwithstanding it contained a provision which I did not like. I voted for it because I wanted to emphasize the fact that I believe the power exists here to prevent an interlocutory judgment. I wanted to emphasize my belief that not only have we the power, but that this bill will not be effective and will be of practically no value to the people of the United States unless there is a provision put into it limiting the right of a judge to issue an injunction whenever he sees fit, or two or three judges, if there happen to be two or three judges, to do so.

The Senator from Idaho [Mr. DUBOIS] has just presented the case. Everybody who has had anything to do with this question and who has had any observation about what has been going on knows just what the difficulty is. There is no question but that in nine cases out of ten when a carrier finds fault with an order of the Commission and complains to a judge, he will find a judge who will issue a temporary injunction for him, or an interlocutory injunction, more properly speaking, which will tie up the case from that time on until the expiration of the period fixed in this bill, which the majority of the Senate persistently declare shall not exceed two years.

Mr. President, there is not a lawyer in this country who does not know that when a railroad goes into the United States circuit courts or when they go into the State courts, they employ, as a rule, the best talent in the profession. They can prevent a judgment for the time that you have fixed here that these orders shall be enforced, for you have determined that that time shall be two years and have voted down three years; and, I presume, two years will be what will be finally provided for in the bill.

Mr. President, I shall vote for the amendment of the Senator from Iowa, and then I shall wonder, I shall look around with surprise, when I see Senators, who are lawyers, who have voted against the preceding amendments—I shall wonder, Mr. President, how they will reconcile their vote then with their votes before, unless they shall put it on the ground that perhaps the first measure was too drastic, and this is modified, or perhaps they will find solace to their consciences in the fact that the court is to consist of two judges, though ordinarily there is but one. But under either of the motions which have been voted down there would have been the same number of judges and the same care and attention given to the question whether an injunction should be issued or not under this provision.

Mr. President, I have but little care as to what happens to this bill. I have been anxious for the passage of a bill which I believe would accomplish what the people of the United States have demanded. I do not believe—and I will put myself on record now—that this bill will do what the Chief Executive asks you to do. I do not believe it will do what 90 per cent of the American people want you to do, or what they believe it will do. I am restrained here by the proprieties of the occasion from saying some things which I should say in some other place; but I do not believe that the friends of this kind of legislation are giving direction here to this bill.

The bill will pass, Mr. President; it will become a law; the people of the United States will be handed a "gold brick," in the common language of the country, and after two or three years of effort to get redress under this bill they will find that they have got to try it over again. It is possible that the people will patiently submit to what they will believe is either the incompetency of this body or its dishonesty—one or the other—but I do not believe, patient and enduring as the public generally are, that they will always submit and allow these

great corporations to control not only the transportation of the country, but, because they control the transportation of the country, control also its politics. The day will come when this Senate and the House of Representatives will be compelled to pass a bill that will give to the people the relief which every man here professes to believe they are entitled to.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Georgia [Mr. BACON].

Mr. BACON. On that I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. SPOONER (when his name was called). I again announce my pair with the Senator from Tennessee [Mr. CARMACK]. If I were at liberty to vote, I should vote "nay."

The roll call having been concluded, the result was announced—yeas 24, nays 52, as follows:

YEAS—24.			
Bacon	Culberson	La Follette	Newlands
Berry	Daniel	Latimer	Overman
Blackburn	Dubois	McCreary	Rayner
Clark, Mont.	Foster	McLaurin	Simmons
Clarke, Ark.	Frazier	Martin	Stone
Clay	Gearin	Money	Tallaferro
NAYS—52.			
Aldrich	Clark, Wyo.	Gamble	Nelson
Alger	Crane	Hale	Nixon
Allee	Cullom	Hansbrough	Penrose
Allison	Dick	Hemenway	Perkins
Ankeny	Dillingham	Hopkins	Pettus
Beveridge	Dolliver	Kean	Piles
Brandegee	Dryden	Kittredge	Platt
Bulkeley	Elkins	Knox	Scott
Burkett	Flint	Lodge	Smoot
Burnham	Foraker	Long	Sutherland
Burrows	Frye	McCumber	Warner
Carter	Fulton	Millard	Warren
Clapp	Gallinger	Morgan	Wetmore
NOT VOTING—13.			
Bailey	Gorman	Patterson	Tillman
Burton	Heyburn	Proctor	
Carmack	McEnery	Spooner	
Depew	Mallory	Teller	

So Mr. BACON's amendment was rejected.

Mr. ALLISON. I move—

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from South Carolina?

Mr. TILLMAN. Does the Senator from Iowa desire to move an amendment to the same section?

Mr. ALLISON. I should be glad before leaving this section—

Mr. TILLMAN. I desire to make a slight verbal change in line 11, page 11, which, I think, will clarify the language and be advisable. Mr. President, on page 11, line 11, I move to strike out the words "shall publish and file" and insert the words "in respect to;" then, in line 12—

The VICE-PRESIDENT. The Secretary will state the amendment proposed by the Senator from South Carolina.

The SECRETARY. In section 4, page 11, line 11, after the word "otherwise," it is proposed to strike out the words "shall publish and file" and insert the words "in respect to."

The amendment was agreed to.

Mr. ALDRICH. I should like to ask what is the other amendment the Senator intends to propose?

Mr. TILLMAN. It is on the next line, to strike out the word "and" and insert the word "shall," so as to complete the sentence and make it run properly.

Mr. ALDRICH. I ask that the portion of the bill proposed to be amended be read as it will appear when amended.

The VICE-PRESIDENT. The Secretary will read as requested.

The SECRETARY. As proposed to be amended, it would read as follows:

Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the portion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Mr. TILLMAN. This amendment is to correspond to the preceding changes in regard to the publication of joint rates.

The VICE-PRESIDENT. The question is on the second amendment proposed by the Senator from South Carolina.

The amendment was agreed to.

Mr. TILLMAN. If the Senator from Iowa will permit me, before we leave this section I want to move to strike out the words at the bottom of page 11, lines 24 and 25, "provided no reasonable or satisfactory through route exists," and insert in

lieu thereof the words "such authority shall extend to through routes and joint rates for transportation partly by railroad and partly by water."

Mr. ALDRICH. That amendment is not a verbal change; it changes the whole sense.

Mr. TILLMAN. I know it is not a verbal amendment. It changes the sense, and I will give the reason for it if the Senator wishes me to do so.

Mr. ALDRICH. That amendment will give rise to a good deal of discussion, because it changes the whole provision in regard to through routes in the House bill.

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from South Carolina?

Mr. ALLISON. I yield; certainly. I have only one suggestion further to make with reference to this section.

Mr. TILLMAN. I am perfectly willing that the Senator should get through with his amendment to this section, and then let me put my amendment in, or try to put it in.

Mr. ALLISON. I desire to move an amendment to correct an omission that I intended to correct before leaving the matter. I ask unanimous consent, in the amendment which was agreed to, on page 11, line 5, to come in after the word "prescribe," to insert after the word "time," where it first occurs, the words "not less than thirty days."

The VICE-PRESIDENT. The Senator from Iowa asks unanimous consent to amend the amendment heretofore agreed to on his motion. Is there objection? The Chair hears none. The Secretary will state the proposed amendment.

The SECRETARY. It is proposed to amend the amendment agreed to, after the word "prescribe," page 11, line 5, by inserting after the word "time," where it first occurs, the words "not less than thirty days."

The amendment was agreed to.

Mr. TILLMAN. At the bottom of page 11, lines 24 and 25, I move to strike out the words "provided no reasonable or satisfactory through route exists" and insert in lieu thereof "such authority shall extend to through routes and joint rates for transportation partly by railroad and partly by water."

Mr. NELSON. That amendment was agreed to yesterday.

Mr. TILLMAN. The Senator is mistaken. We did not get to this part of the bill yesterday. There was a preceding amendment that had reference to water, but this is an entirely different matter.

The VICE-PRESIDENT. The Secretary will state the amendment proposed by the Senator from South Carolina.

The SECRETARY. On page 11, lines 24 and 25, it is proposed to strike out "provided no reasonable or satisfactory through route exists" and insert in lieu thereof the words "such authority shall extend to through routes and joint rates for transportation partly by railroad and partly by water."

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from Rhode Island?

Mr. ALDRICH. I will wait until the Senator gets through.

Mr. TILLMAN. I am going to explain why these words ought to go in.

This is part of a provision covered by lines 17 to 25, page 11, which authorizes the Commission to establish through routes and joint rates as a maximum to be charged, and to prescribe the divisions of such rates when the carriers fail to agree. The defect in this provision is found in the addition, in lines 24 and 25, of the words "provided no reasonable or satisfactory through route exists." This operates as a bar to the compulsory establishment of an additional through route which may be demanded and found reasonable. Such additional through routes very frequently, if not generally, ought to be granted, for otherwise competition between practicable reasonable through routes is denied. As the provision now stands, a through route may be established where none exists, but, generally speaking, there is always at least one through route. The most frequent subject of complaint is discrimination between connecting lines, and however unjust such discrimination against the nonfavored carrier or the public interest may be, the proviso clause above mentioned operates to prevent relief—

I am reading from a memorandum furnished me by the Interstate Commerce Commission—

The Commission has very recently decided the case of the Enterprise Transportation Company against certain trunk lines, and the decision shows a through route between the railroad trunk lines at New York and the Fall River Line to New England, but a refusal to establish a through route with the Enterprise Transportation Company, a water line competing with the Fall River Line between New York and New England. To avoid all question there should be inserted in place of the words stricken out, as above indicated, the following: "Such authority shall extend to through routes and joint rates for transportation partly by railroad and partly by water."

Which are the words I have moved to insert.

Here is the case of this Enterprise Company, in which it is shown that an independent boat line is denied through routes with the western railroads because the New York, New Haven and Hartford road owns the only boat line which reaches Fall River except this one. Therefore competition between the West

and New England, for instance, is prevented by the failure to establish through routes, if they are demanded, with other lines. In other words, there is a monopoly created, or is already in existence, and an absolute denial of competition. One boat line connects with the road. The other boat line is not allowed to connect with the road, and is not given through rates.

Mr. ALDRICH. Mr. President, there should be no misapprehension as to the effect of this amendment. Under the bill as it passed the House, the Interstate Commerce Commission had a right to establish through routes and joint rates where no reasonable through route exists. This proposes to strike out the provision about reasonableness, and to allow the Commission to establish through routes anywhere in the United States without reference to existing routes and without reference to whether the people are accommodated by the existing route. The question of through routes by rail and water is a different question, and under the guise of providing for through routes by rail and water the Interstate Commerce Commission is suggesting to the Senate or dictating to the Senate that it shall destroy the whole structure of this bill, so far as through routes are concerned.

Mr. TILLMAN. Will the Senator permit me?

Mr. ALDRICH. I will yield to the Senator a little later.

Mr. TILLMAN. Unless the Senator has the floor, I can not speak any more.

Mr. ALDRICH. I yield for a question.

Mr. TILLMAN. I should like to ask the Senator if he favors a condition of monopoly by which an existing through route shall maintain and control all the traffic, and deny other boat lines an opportunity to secure some of the traffic by having through routes established by the Interstate Commerce Commission?

Mr. ALDRICH. I am entirely familiar with the case suggested by the Interstate Commerce Commission through the Senator from South Carolina. There is no monopoly and there can be no monopoly of transportation between New York and Providence and Fall River and the other points along the Sound. The Fall River Line, or, rather, the New England Navigation Company, which is a branch of the New York, New Haven and Hartford Railroad, owns and operates three or four lines of steamers running to New London, Providence, Fall River, and Newport. Well, Newport is part of one line. There are now in existence at least two independent lines covering the same territory, and there is nothing to prevent anyone who cares to go into the business from to-morrow establishing a line or any number of lines over that territory. There can be no monopoly about it, and there is no monopoly.

We are asked to legislate for the whole country upon this one case which the Interstate Commerce Commission has had before it. I have no objection to inserting, after the words now in the bill, the words "in relation to through routes by rail and water;" but I do object to striking out the words "provided no reasonable or satisfactory through routes exist," so as to give the Commission the power to establish through routes anywhere it pleases throughout the United States, without reference to the facilities which now exist.

Mr. TILLMAN. I should like unanimous consent, if the Senate will permit, to insert in the RECORD the hearing and finding, No. 867, of the Interstate Commerce Commission in relation to this matter, without regard to how the vote may be.

The VICE-PRESIDENT. Without objection, the request is granted.

The matter referred to is as follows:

No. 867. In the matter of alleged unlawful discrimination against the Enterprise Transportation Company by railroad lines leading from New York City.

Railroad lines leading west from New York City make joint through rates with the New England Navigation Company, controlling the Fall River line of steamers, which plies between New York and Fall River, Mass., and some other New England cities, and also controlling other important steamer lines operating on Long Island Sound. Such joint rates apply in both directions between western and New England points. The New England Navigation Company is owned and operated by the New York, New Haven and Hartford Railroad Company. The rail lines centering in New York and running westerly thereof refuse, for stated business reasons, to make the like or any joint rating arrangement with the Enterprise Transportation Company, a steamship line plying between Fall River and other New England points and New York City, and in competition with the New England Navigation Company's Fall River line. This Fall River line may, by reducing rates on local traffic, force out of business the Enterprise Transportation Company, while obtaining a lucrative and supporting business from through traffic, and upon disappearance of such competition, restore the former charges. The existence of the Enterprise Transportation Company as a competitive factor is of distinct value to the public, and that existence may depend upon its right to engage in through business. This investigation was made with the understanding that the Commission is without power to grant any relief, and no opinion as to whether the through-rating arrangement should be extended to the Enterprise Company is expressed; but if the public is to have the legitimate benefit of water competition, it is evident that authority should be provided to establish through routes between rail

and water carriers, or at least to prevent unjust discrimination by rail carriers between connecting water lines.

[Submitted March 5, 1906. Decided April 5, 1906.]

David Whitcomb, for Enterprise Transportation Company.
E. G. Buckland, for New England Navigation Company.
G. S. Patterson, for Pennsylvania Railroad Company.
George F. Brownell, for Erie Railroad Company.
R. D. Whiting, for Delaware, Lackawanna and Western Railroad Company.
Charles C. Paulding, for New York Central and Hudson River Railroad Company.
Frank H. Platt, for Lehigh Valley Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

The Enterprise Steamship Company, which plies between Fall River, Mass., and New York City, recently filed an informal complaint with the Commission, alleging that it desired to engage in the transportation of merchandise from Fall River to various western destinations; that in the course of such transportation it would carry the freight to New York and send it west from New York by rail; but that the rail lines leading from New York declined to extend to it the same rates which they applied to traffic of the same character from the same point when delivered to them by its rival—the New England Navigation Company. It appeared from an inspection of our tariffs that these various rail lines published in connection with the New England Navigation Company through rates from Fall River to western destinations, and it seemed, therefore, that the complaint of the Enterprise Company was really that such rail lines declined to enter into through arrangements with it while doing so with its competitor. We accordingly advised the Enterprise Company that the act to regulate commerce did not require rail carriers to form through routes with water lines, and that, therefore, the Commission could make no order in the premises even if the complaint were sustained; but inasmuch as the subject is one of great practical importance, and since the amendment of the act to regulate commerce was now under discussion, it seemed suitable to investigate the circumstances surrounding this complaint with a view to making some report for the general information of the public. A proceeding of inquiry was, therefore, instituted and the various parties were heard. From the testimony taken upon that hearing, in connection with various matters of common knowledge, and the rates on file with this Commission, the following facts appear:

The New York, New Haven and Hartford Railroad Company has a practical monopoly of transportation by rail in that territory lying south of the Boston and Albany Railroad and east of its own line from South Norwalk to Pittsfield. The New Haven Company has lines which extend outside this territory, but within this territory it controls all the steam railroads of any consequence, excepting the New London Northern, which extends north from New London, Conn., to Brattleboro, Vt.

Many of the most important towns served by the New Haven Railroad are located upon the ocean, so that water transportation is readily available to many points. The most important of these cities are Providence and Fall River, but lines of steamers touch at almost all cities of any importance upon Long Island Sound by which communication is had with New York City. It was necessary, therefore, for the New Haven Company, in perfecting its transportation monopoly of the territory covered by it, to control also the facilities of transportation by water, especially between those towns and New York City, and in the execution of its plans it either established or acquired most of the important steamship lines operating upon Long Island Sound. These different lines seem to have been consolidated into the New England Navigation Company, which is owned and operated by the New Haven Company, and which has in recent years handled most although by no means all of the water transportation between these various points and New York City.

The Enterprise Steamship Company is incorporated under the laws of Massachusetts and began business in June, 1903. It has a capital stock of \$400,000 which, it was stated, has been paid in. Its fleet consists of three steamers, one of 800 tons burden and two of 1,800 tons, the three being fitted for the transportation of both passengers and freight. Its steamers ply exclusively between Fall River and New York City, touching, however, Jamestown, which is opposite Newport, R. I.

For some time past the regular passenger fare between New York City and Fall River has been \$3 during the summer and \$2 during the winter months. The Enterprise Company established at the outset a rate of \$1, which it has ever since maintained. Its representative stated that in his judgment this rate was fairly compensatory for the service and that his company was satisfied to do business on that basis. The New Haven Company has reduced its passenger rate to \$1.50 at the present time between New York and Fall River. The testimony did not show what the effect of this reduction was between New York and interior points, nor whether the Enterprise Company carried passengers for such interior points.

The principal traffic from Fall River to New York is cotton piece goods of various kinds, and for many years the rate applied by the New England Navigation Company to this traffic has been 12½ cents per 100 pounds. The Enterprise Company established a rate of 10 cents per 100 pounds at the outset, which has been since continued. The bulk of the transportation by water from New York to Fall River is raw cotton and various mill supplies, and the Enterprise Company fixed its class rates and its local rate on raw cotton at 2 cents per 100 pounds less than that previously prevailing by the New England Navigation Company. It appeared from the testimony that these rates had been continued by the Enterprise Company, and that the New England Company had not reduced its tariffs up to the time of the hearing. It further appeared that under this adjustment of rates the Enterprise Company obtained a considerable part of the strictly local business between Fall River and New York. The general manager of that company testified that of ninety-two mills in Fall River his company was then doing business with eighty-five.

Freight from New England can reach the Middle West by various routes. It may go by the direct all-rail route or by the more circuitous rail route through Canada. It may also be transported by water from New England to some southern port, like Norfolk or Baltimore, and from there taken by rail to its destination. In the latter case the water line frequently pays and absorbs a local rail rate from the interior New England point to the seaboard. These competitive conditions have given New England the same class rates and to a considerable extent the same commodity rates as apply from New York City.

Confining our attention to traffic originating at Fall River, it is evi-

dent that this may either be delivered to the New Haven Company for shipment by its rail line or to some steamboat company for transportation by water. Since a comparatively small part of the freight traffic from Fall River stops at New York as a final destination, and since a comparatively small part of that traffic to Fall River originates at New York as the point of original production, it follows that the Enterprise Steamboat Company, if it obtains any great amount of business between these points, must make arrangements with the rail and water carriers leading from New York as to the handling of this business beyond that point. It seems to have been able to do this with water lines leading from New York south, and the testimony indicates that it exchanges at New York City considerable quantities of freight with the Old Dominion Steamship Company. The quickest service between Fall River and the West is by boat from Fall River to New York and by rail from New York. Large amounts of traffic move by this route, which in the past has been exclusively handled by the New England Navigation Company. The Enterprise Company, desiring to participate in this business and also in business moving in the opposite direction, has applied to the various rail lines asking for the same treatment which they accord to the steamboat company of the New Haven road.

The rate from Fall River to Chicago on cotton piece goods is 55 cents, and from New York City the same. When this traffic is brought by boat from Fall River to New York and delivered to the rail carrier at New York there are two services—the transportation from Fall River to New York and the transfer at New York. The transfer charge is ordinarily reckoned at 3 cents per 100 pounds. The local transportation charge of the New Haven Company is 12½ cents, but it was said by witnesses for the Enterprise Company that the trunk lines allowed the New Haven road 10 cents as its division. The transfer service is actually performed, sometimes by the New England Navigation Company and sometimes by the receiving railroad company, but in either case it is paid for by that company; that is to say, the railroad company which receives the cotton piece goods from New England Navigation Company at New York in effect transports that traffic to Chicago for 42 cents, whereas if those goods were delivered to the same company at the same place and under the same circumstances by the Enterprise Company the railway company would exact for its charge 55 cents per 100 pounds. This, of course, deprives the Enterprise Company of all possible opportunity of participating in that business.

The carriers gave various reasons for their refusal to join with the Enterprise Company in these through rates. The Pennsylvania states that its facilities are so congested in New York at the present time that it is only with great difficulty that it can handle the traffic now offered at that point; that if it received this traffic from two companies instead of one, whether it took the traffic itself or whether the traffic was delivered to it, more room would be required. The representative of that company further stated, in substance, that there was only so much traffic from Fall River of this character; that his company could not hope to receive any more business if it joined with the Enterprise Company, since what it received from that company would be subtracted from that amount which it was now receiving from the New England Company, and that, since it could handle the traffic better from one company than from two, he had declined to entertain the proposition.

The New York Central stated that this business was not desirable; that it had no arrangement with any steamboat line except the New England Navigation Company, and that with that company its arrangement only covered the four higher classes. It further stated that it would rather cancel its present arrangements with the New England Navigation Company than extend them to the Enterprise Company. It appeared, in the case of the New York Central, that the traffic was delivered to it by team in New York City, where it was loaded into its cars. No reason was suggested why that company would suffer any inconvenience if it handled traffic for the Enterprise Company delivered to it in the same place and in the same manner.

The other companies, so far as they were represented by witnesses at the hearing, did not claim that they were unable to handle the traffic. Their statements were to the general effect that they preferred to receive this traffic from the New Haven Company by rail; that they only consented to handle it by water through New York as an accommodation to the New England Navigation Company and their patrons, and that they did not desire to form this connection with the Enterprise Company, because they did not desire to increase the amount of this business which came from Fall River by water.

The general situation seems to be this. The New Haven Company controls the greater portion of the traffic within its territory. Most of this traffic, in the natural course of things, would go by the all-rail routes; a certain amount of it may go by water to New York and from there by rail. The lines leading from New York can receive this traffic from the New Haven Company either by rail or by water; they prefer to receive it by rail. At the present time the New Haven road is dividing this business between all these different lines in a satisfactory manner. By forming a connection with the Enterprise Company they would not increase the total amount of the traffic which they handle, and they might introduce a factor which would become a disturbing element in the present harmonious relations. They have nothing to gain, and possibly might lose something by the change.

The Enterprise Company claimed that the refusal of the rail lines to participate with it in through business was the result of an agreement between those lines dictated by the New Haven Company. The only evidence tending to show this directly was the declaration of an agent of the Delaware, Lackawanna and Western Railroad. The Enterprise Company desiring to ship cotton piece goods from Fall River to Chadwick, N. Y., and understanding that the above railroad company accorded to the New England Navigation Company a rate from New York of 16½ cents, while its local rate was 25½ cents, applied for the same reduced rate. This the agent refused, stating that his company could only accord that rate to the New England Navigation Company by reason of an agreement to that effect with the New Haven Company. We could hardly find from the testimony that any similar agreement with other lines exists, although such may be the fact; and still less that there is any conspiracy among all these railroads to accomplish the thing complained of. It appears to us that the course of these railway lines may be justifiable upon sound business principles if the matter be examined solely from their standpoint.

How does the matter stand when examined from the view point of the public? We have already seen that the Enterprise Company has been of great benefit to shippers and passengers using that line by reducing the rates formerly in effect. The complainant concedes that rates from Fall River to points in the West would not be reduced if the Enterprise Company were accorded the through privileges which it desires. Those rates are for the most part the same from New York and Fall River to Chicago and points basing on Chicago, or which

take a percentage of the Chicago rate. To reduce the rate from Fall River would break down the whole scheme of rates. This does not appear to be true of rates to points east of Buffalo and Pittsburg, which are generally less from New York than from Fall River. In very many cases, at least, the rate from Fall River to those points would be less if the present local rate of the Enterprise Company were added to the present division of the rail line from New York. It does not appear whether a reduction would in fact result.

It was also said by the Enterprise Company that if that company could engage in this traffic its patrons would have two lines and would thereby secure more efficient service than otherwise. There was no testimony before us as to the character of the service by either of those steamship lines. It did appear that the Enterprise Company touches at certain wharves in Fall River, to which some of the mills are peculiarly accessible, and that these mills find it to their advantage, for this reason, to patronize that company rather than the New England Company, and that it serves one town not directly served by its rival. It is also undoubtedly true that better and more efficient service is obtained when competition exists than when the business is entirely transacted by one concern.

The most serious feature of this case rests in the fact that if the New England Navigation Company can exclude the Enterprise Company from all participation in through business and confine it strictly to local business between Fall River and New York it thereby acquires the power of forcing the Enterprise Company out of business altogether, for it may so reduce its rates on local traffic that this company could not meet them while obtaining a lucrative and supporting business from through traffic. When the competition of the Enterprise Company had disappeared rates would be restored to what they formerly were, which, it fairly appears, was higher than reasonable competition would produce. The existence of the Enterprise Company as a competitive factor is of distinct value to the public, and that existence may depend upon its right to engage in through business. This is well illustrated by the last case in which this matter has been before the courts: *Gulf, C. & S. F. R. Co. v. Miami S. S. Co.* (30 C. C. A., 142; 52 U. S. App., 732; 86 Fed., 407).

Traffic from the Atlantic seaboard to various points in Texas, Indian and Oklahoma Territories and the Mississippi and Missouri valleys passes largely by water from some port like New York to Galveston or New Orleans and is from thence carried by rail to destination. Prior to July, 1897, there was only one steamship line operating between New York and Galveston, known as the "Mallory Line," and two between New York and New Orleans. Three different lines of railway with various connections led from Galveston into Texas and this other territory.

In the summer of 1897 the Miami Steamship Company, conceiving this field to be a promising one, determined to enter it, and put on a line of steamboats between New York and Galveston. At the outset the various railroads leading from the port of Galveston seem to have accorded to the Miami company the same rates and privileges in substance which were given the Mallory Line. The Miami company, however, found it to its advantage to somewhat reduce the rates between New York and Galveston, and this operated to effect a reduction in rates throughout the territory above described, the shrinkage being in all cases in the ocean transportation from New York to Galveston. This created more or less dissatisfaction, since these ocean and rail rates from New York are fixed with reference to the all-rail rates from the same points to the same destinations, and in the early part of 1898 the railroad lines leading from Galveston, the Mallory Line and the two steamship lines leading from New York to New Orleans entered into an arrangement by which it was, among other things, agreed that the railroad lines should break off all connection with the Miami Steamship Company.

Traffic between interior points and the Atlantic seaboard was handled by the various steamship lines in connection with the rail lines upon through bills of lading in both directions, and the through rate was divided between the water and the rail lines upon a basis which allowed to the rail line less than its local tariff from Galveston to point of destination. The railroad companies then declined to honor through bills of lading, and also declined to form through routes upon the basis of the divisions hitherto in force. The Miami Steamship Company could of course transport the freight from New York to Galveston and there tender it to the railroad companies for transportation to destination, but the railroad companies exacted in all cases their local tariff, and required the Miami company to prepay the freight charges. In case of traffic going in the opposite direction, the railroad companies declined to issue any through bill of lading, and required the shipper to prepay the transportation charge to Galveston, if the traffic was to go by the Miami company.

It will be seen at a glance that under these conditions the Miami company could not hope to participate in that traffic; for not only did it receive much less for the same service than its competitors, but the handling of the business by that line was so hedged about with difficulties as to make it almost impossible for the shipper to patronize its route. In view of this that company applied to the Interstate Commerce Commission, but was advised that under the law that body could probably render it no assistance. It thereupon filed a bill in equity in the circuit court for the eastern district of Texas alleging in effect that these different companies were not only in violation of the act to regulate commerce, but were also in violation of the Sherman Antitrust Act and praying an injunction. The circuit court granted the injunction, but the circuit court of appeals in an elaborate opinion dissolved the injunction and held that the Miami company was entitled to no relief; that the railway companies might require the prepayment of their freight charges; that they were not compelled to enter into joint arrangements with one steamship company because they did with another; and that even if the antitrust act were violated only the United States Government could maintain an injunction suit.

The result of this decision was that the Miami Steamship Company withdrew from that field and that rates were restored to their former basis. The further result was that still later many of these rates were advanced, as appeared in testimony before the Commission, by the concerted action of the water lines and various railways and that in consequence rates to Texas common points were also advanced.

This investigation was begun upon the understanding that the Commission had no power to grant any relief in the premises. The railroads have not been heard further than they were inquired of, to some extent, by the Commission itself. We do not think that under these circumstances we ought to express an opinion as to whether these rail lines should accord the Enterprise Company the through arrangements asked for, since it is evident that many things which might influence a final judgment were not developed in the hearing before us.

At the present time water competition exercises an important influ-

ence upon the rail rates of this country. That form of competition is less susceptible of control than transportation by rail, and many persons believe that the true policy of this country is found in the improvement and construction of waterways. If the legitimate benefit of such competition is to be had, it is evident that some regulating body must exercise in our country, as does the English railway commission in England, the authority to establish through routes between water and rail carriers, or at least to prevent undue discrimination by rail carriers between connecting water lines.

Mr. LODGE. Mr. President, this matter has been brought to my attention particularly by the Fall River case, which has been cited by the Senator from South Carolina. An independent steamship company has been started, running from Fall River to New York, and the only other line is the New England Navigation Company, which is controlled by the New York, New Haven and Hartford. The trunk lines, both in New York and New England, so arrange the rates that this steamship company is deprived absolutely of freight, which seems not quite fair to the public or to the company. They brought the case before the Interstate Commerce Commission, which decided, as I remember, that, under the existing law, they had no power to deal with this case.

This bill provides:

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment.

In other words, the intent of the bill is clearly to give relief in cases of through rates where there is complaint. But as the bill stands now, on page 11, unless some special provision is made, it covers the land lines, but the water lines connecting are omitted. My desire is simply that the connecting water lines shall be treated, as the first section of the bill obviously intends, in the same way as a through route which is all rail, although made up perhaps of different and connecting companies. There seems to be no reason why, because one of the links in the route is a water line, it should be deprived of the appeal which the bill obviously contemplates. The words which I propose myself to insert are these:

And this provision shall apply when one of the connecting carriers is a water line.

So as to clearly include them.

Mr. ALDRICH. I have no objection to that.

Mr. KNOX. I should like to ask a question of the Senator from Massachusetts before he takes his seat. Do you not think that all of the powers conferred by this bill apply to all the transportation lines referred to in the first section? That would be my notion of it. Here is a power to establish through routes and joint rates. Now, establish through routes and joint rates upon what lines of transportation? Upon all the lines of transportation described in the first section of the bill, because the first section of the bill says they shall be subject to the powers given to the Interstate Commerce Commission.

Mr. LODGE. Then, Mr. President, I should not think it would do any harm to insert that provision. What I want is to bring a case like this within the jurisdiction of the Interstate Commerce Commission.

Mr. KNOX. I have not the slightest objection to inserting it, except that it seems to me this bill has so many things in it in duplicate—

Mr. LODGE. I am inclined to think the interpretation of the Senator from Pennsylvania is correct. If it is the correct interpretation, then it would seem to me that the proviso would absolutely cut off any attempt at competition if a route already existed.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from South Carolina.

Mr. ALDRICH. I hope the Senator from South Carolina will modify the amendment.

Mr. PETTUS. I ask that the pending amendment may be read.

The VICE-PRESIDENT. At the request of the Senator from Alabama the pending amendment will again be stated.

The SECRETARY. On page 11, line 24, after the word "rates," strike out the following words: "provided no reasonable or satisfactory through route exists," and insert in lieu thereof:

Such authority shall extend to through routes and joint rates for transportation partly by railroad and partly by water.

Mr. ALDRICH. I appeal to the Senator from South Carolina to allow the last part of the amendment to be adopted in addition to the words now in the bill.

Mr. TILLMAN. Why should we authorize the Commission to establish through routes and then deny them the privilege here?

Mr. ALDRICH. We do not deny it.

Mr. TILLMAN. We surely do, if we retain the words "if no reasonable or satisfactory through route exists." It looks to me that if those words are stricken out it is left to the discretion

of the Commission whether upon a proper complaint there should be another through route established; whereas if there is already one, while the words "reasonable and satisfactory" might, in the judgment of the Commission, warrant them in establishing another, because the one is not reasonable and satisfactory, the idea I would have would be that the Commission would hesitate very long about establishing another route if one was already in existence, because the determination whether it was reasonable and satisfactory would be left to them and they might not want to assume the responsibility. On the other hand, if this clause is not in, then the Commission would determine that question under its general power.

Mr. LODGE. Mr. President—

The VICE-PRESIDENT. The Chair would call attention to the fact that both Senators are out of order under the rule.

Mr. LODGE. I was aware of that. I was just about to begin by saying that, speaking in violation of the rule, I should like to say a word to the Senator from South Carolina about the proviso, "provided no reasonable or satisfactory through route exists."

The very proposition on which this appeal rests, as I understand, is that the service of the through route in existence is neither reasonable nor satisfactory. My doubt arises from the fact that it does not seem to me to include water lines. The Senator from Pennsylvania may be right about that. But I do not think it could do any harm to insert:

And this provision shall apply when one of the connecting carriers is a water line.

Mr. TILLMAN. If that is satisfactory to the Senator, it is satisfactory to me, because it is in his part of the world and not mine.

Mr. LODGE. I think it would meet the difficulty.

The VICE-PRESIDENT. Does the Senator from South Carolina—

Mr. TILLMAN. I accept the amendment proposed by the Senator from Massachusetts.

The VICE-PRESIDENT. The amendment will be stated.

Mr. LODGE. Add at the end of line 25—

And this provision shall apply when one of the connecting carriers is a water line.

Mr. FULTON. Does that leave in the proviso?

Mr. ALDRICH. Yes.

Mr. FULTON. I submit that the proviso ought to go out. It serves no good purpose there, and it will be a feature of embarrassment.

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. The Chair will suggest that the Secretary first state the amendment proposed by the Senator from South Carolina as amended by the amendment of the Senator from Massachusetts. Does the Chair understand the Senator from South Carolina to have withdrawn his proposed amendment?

Mr. TILLMAN. I am entirely indifferent in this matter in a personal way other than that I am trying to get the best possible law. It seems to me the amendment proposed by the Interstate Commerce Commission is a perfectly just and proper one. I do not know in whose time I am speaking, unless it is by the indulgence of the Senate; the fact that I am in charge of the bill and am trying to get the bill—

The VICE-PRESIDENT. The Chair will state that the debate has been proceeding for some time in violation of the rule, but by unanimous consent.

Mr. TILLMAN. I do not want to break a rule which I am so anxious to have maintained. I would rather leave it to the Senate and let the Senate determine it. I will not withdraw the amendment.

Mr. TELLER. Let us have it read.

The VICE-PRESIDENT. The Secretary will again state the amendment.

Mr. LODGE. The Senator from South Carolina has not withdrawn his amendment.

The VICE-PRESIDENT. The Chair so understands, and it will be stated by the Secretary.

Mr. TELLER. I understand he accepted an amendment to it.

Mr. TILLMAN. No; I have just changed my mind.

The VICE-PRESIDENT. The Secretary will again state the amendment.

The SECRETARY. On page 11, line 24, after the word "rates," strike out the following words: "provided no reasonable or satisfactory through route exists," and insert in lieu thereof:

Such authority shall extend to through routes and joint rates for transportation partly by railroad and partly by water.

The VICE-PRESIDENT. The question is on agreeing to the amendment just stated.

The amendment was rejected.

Mr. SPOONER obtained the floor.

Mr. LODGE. I should like to offer my amendment.

The VICE-PRESIDENT. The amendment proposed by the Senator from Massachusetts will be stated.

Mr. SPOONER. I supposed I was recognized by the Chair.

Mr. LODGE. I suppose the Senator can cut me off if he wants to.

Mr. SPOONER. I do not want to cut you off.

Mr. LODGE. I do not want to take the floor. I merely desire to offer my amendment.

The VICE-PRESIDENT. The Senator from Wisconsin was recognized. Does he yield to the Senator from Massachusetts?

Mr. SPOONER. Certainly.

The VICE-PRESIDENT. Will the Senator from Massachusetts again state his amendment?

Mr. LODGE. My amendment is to add the words which I have stated.

The VICE-PRESIDENT. The amendment will again be stated.

The SECRETARY. After the word "exists," in line 25, on page 11, it is proposed to insert:

And this provision shall apply when one of the connecting carriers is a water line.

The amendment was agreed to.

Mr. SPOONER. I want to call the attention of the Senator from South Carolina to the fourteenth line, page 11. I think he will very much perfect the language and possibly eliminate some invalidity from it if he will insert there the words "just and reasonable," so that it will read "just and reasonable portion of the rate." I move to insert, after the word "the," in line 14, the words "just and reasonable."

The SECRETARY. On page 11, line 14, before the word "portion," it is proposed to insert "just and reasonable;" so that if amended it will read:

The Commission may after hearing make a supplemental order prescribing the just and reasonable portion.

Mr. SPOONER. I move to insert "proportion" instead of "portion."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. GALLINGER. I offer the amendment I send to the desk.

The VICE-PRESIDENT. The Senator from New Hampshire offers an amendment, which will be stated.

The SECRETARY. On page 11, line 5, after the word "prescribed," it is proposed to insert the following:

The Commission in prescribing any maximum rate or charge as herein provided shall not be authorized to receive complaints or determine differentials or preference of one locality over another.

Mr. GALLINGER. Mr. President, there has been so much discussion of this bill that I have no disposition to be heard or to hear my voice in this debate. I have an article from a recent issue of the Washington Post which discusses this matter so clearly and, to my mind, so convincing that I am going to ask the Secretary to read it instead of discussing it myself. I think he can read it in the time that is allotted to me—fifteen minutes.

The VICE-PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary proceeded to read the article.

Mr. ALDRICH. I ask that the article may be inserted in the RECORD without further reading.

Mr. GALLINGER. Mr. President—

Mr. FORAKER. I should like to hear it read. If I understand the amendment offered by the Senator from New Hampshire, it is one in which I am very much interested, as is the locality where I reside.

Mr. GALLINGER. Let the Secretary read.

The Secretary resumed the reading of the article.

Mr. FORAKER. I withdraw the request I made a moment ago that the reading of the article be continued. I see what the amendment is. I hope it will be voted down, and I hope it will be voted down for the reason that it raises a question in which Cincinnati is very importantly interested. We have had trouble there for many years on account of the very thing that this would prohibit not being done by anybody, and it has been the hope of the people residing there and interested in shipping and common carriers that in this legislation we might secure relief from what we believe to be a discrimination against Cincinnati in the fixing of rates from other cities to points in southern territory in which Cincinnati competes with these other cities for a market. I do not want to prolong the argument. I discussed this at length on another occasion. I think Senators all understand it. I think it would be very unfortunate for us if in addition to not giving us affirmative relief we should provide affirmatively, as the adoption of the amendment would, that we should not have any relief under this law.

The VICE-PRESIDENT. What disposition does the Senator from New Hampshire desire made of the article?

Mr. GALLINGER. Let the remainder of the article be inserted in the RECORD without reading, and let a vote be taken on the amendment.

The VICE-PRESIDENT. Without objection, it is so ordered.

The article referred to is as follows:

When the Senate takes up consideration of the amendments to the Hepburn railroad rate bill, there will doubtless be considerable discussion of the question as to the basis on which the Interstate Commerce Commission shall make rates. The bill in its present form does not undertake to prescribe any basis or standard for the guidance of the Commission, but proposes to leave that body free to exercise its judgment as to every rate. Whether the bill, as finally amended, prescribes any definite basis for rate making or not, however, it is probably inevitable that the Commission must adopt a basis or standard of some kind, and adhere to it very closely in all of its orders changing rates. Otherwise it is sure to be charged with making rates by favor and to be criticised for alleged discriminations in favor of certain shippers or certain localities.

The only basis of rate making that has thus far been suggested by any Senator is that of flat mileage rates. It is apparent that if the Commission should make rates on this basis it could defend itself against charges of favoritism, for the rate between any two points on any given commodity would then be the product of the mileage rate multiplied by the number of miles. This would be easy, but would it be satisfactory? For, on the other hand, it is apparent that no system of rate making would be so disastrous to many localities in the United States as would be one based on mileage. It is apparently universally believed by Senators and others who have given this matter close attention that the putting into effect of such a system would mean the remaking of the commercial and industrial map of the United States.

IN EUROPEAN COUNTRIES.

It is stated by an expert upon this subject that in all of the European countries, in which the railroads are either owned and operated by the government or the rates are fixed by governmental authority, and in which rates based on distance are adhered to more or less closely, the uniform effect has been unmistakably to greatly restrict the amount of railway traffic and to narrow the range of commercial activities. In most of the continental countries the railroads have been and are regarded as part of the political machinery and as means for making effective governmental commercial policies. With this end in view, there have been departures from distance rates on export and import traffic and on transit traffic originating in one country and carried across another to a third country or to a seaport; but the domestic traffic in each country is moved on rates adhering very closely to a fixed charge per unit of weight for each unit of distance. While the effect of this has been obviously injurious, it has not been so disastrous in most European countries as it would be in the United States, for the reason that in all of those countries except Russia distances are comparatively short, and in many of them, such as France, Germany, and Holland, inland water transportation has been very highly developed. Whereas in the United States the tendency is constantly toward the abandonment of canal and river traffic, as a result of the low rates made by railroads for long hauls; in both France and Germany the inland waterways are constantly drawing more and more traffic from the railroads, and in both countries the facilities for water transportation are being increased so as to accommodate the low-grade and long-distance traffic that can not pay the high-distance charges by rail.

EFFECT IN GERMANY.

In Germany the effect of distance rates has been to separate the Empire into producing and distributing centers, and the spectacle is presented, for instance, of one section of Germany exporting grains to foreign countries and receiving a governmental bounty on these exports, while another section is importing grain subject to an import duty. The situation is much the same as would exist in this country if rates on grain from the Mississippi Valley to the Atlantic seaboard were so high that grain from the Northwest would move by water to New Orleans for export, while New York and Boston would have to import grain and flour from Canada.

In Russia distances more nearly approximate those in the United States, and the result of distance rates in that country has been to favor the development of localities convenient to the seaports at the expense of interior communities. For instance, much of the land along the line of the Trans-Siberian Railway is well adapted to the growing of wheat, but the freight rates from the Siberian wheat fields to the ports of the Baltic and the Black seas are so high as to be almost prohibitory, with the result that the development of the country along the Trans-Siberian Railway has been greatly retarded and is in marked contrast with the phenomenal development of the territory tributary to the Canadian Pacific, where conditions are somewhat similar, but where freight rates have been made on the American system of disregarding distance when necessary to bring a producing locality into communication with a market.

AUSTRALIA AS AN EXAMPLE.

In no country has the effect of mileage rates been more clearly demonstrated than in Australia. There distances are as great as in the United States, but transportation conditions are entirely different, due to a close adherence to mileage rates and to failure to adopt the American system of port differentials and the American system of basic or basing points. The effect has been to concentrate population and manufacturing, and the business of distributing both domestic and imported commodities almost exclusively in one large seaport city in each colony. In the entire eastern half of Australia the conditions are admirable for the building up of large numbers of flourishing cities and towns, each serving as a base of distribution for the surrounding agricultural communities and each affording a convenient market for part of the farm and garden products of those communities. But, in all this immense tract of country there are no interior towns or cities of importance. The urban population, instead of being distributed among a large number of places of moderate size, such as abound in the United States, is, as is above mentioned, congested in one large seaport town for each colony.

WORKING OF AMERICAN SYSTEM.

In the United States, where the railroads, up to this time, have been free to adjust their rates to commercial conditions, it has been found expedient and economical to so adjust rates as to build up distributing

and manufacturing points in all parts of the country, with the result that there has been a decentralization of population and of industry that has enormously benefited every section. There has been a disposition on the part of some critics of the American railway system to criticize the basing-point system, by which rates from manufacturing centers and seaports to stations within a more or less restricted area about the basing point are fixed by adding to the rate to the basing point the local rates to these surrounding stations. Some of these smaller points have looked upon the lower rates to the basing points as unjustly discriminatory, but a study of the transportation problems involved will show that there is no injustice to the smaller towns in this system. One of the great advantages of the basing-point system is that it admits of more economical railroad operation, and, consequently, of lower average rates. If all goods were shipped direct to the points of consumption from the manufacturing and seaport cities, the number of small consignments would be very largely increased. There would be few shipments in carload lots. Through freight trains would have to stop at more stations to drop a single car or to unload part of a car, and the cost of the service would be increased accordingly. The business of the wholesaler at the basing point would be destroyed, but the retailer at the smaller town would not benefit, for, instead of buying his supplies in the neighboring city, he would have to buy it at some city at a much greater distance, probably at New York, and his freight bills, instead of being smaller, would undoubtedly be larger. This would not be his only loss, but the producers of his locality would lose the advantage of a neighboring city market for part of their products, and the imposition of mileage rates to distant markets would still further reduce their purchasing power. The tendency of mileage rates would be to injure the business of every basing-point city throughout the South and West, and all through the interior of the country, and to build up the seaports, notably New York, and the manufacturing cities nearest to the supplies of raw material.

RESULT THAT WOULD BE INEVITABLE.

For these reasons it is hardly to be expected that Congress will ever deliberately enact a law requiring railroad rates in the United States to be made on a mileage basis; but some students of the question contend that governmental rates must necessarily approximate that basis, and that when the Commission is given the rate-making power many of the results that would follow the legislative establishments of mileage rates will be inevitable. It is contended that the decisions of the Commission in the past show that this would be the result. In the cases in which the Commission has attempted to make rates or has condemned existing rates, its findings have been based very largely upon considerations of distance. A notable illustration of this was afforded by the New York milk-rate decision, the tendency of which was to concentrate milk production for the New York market in localities nearest to the city, and many other cases might be cited showing the same tendency.

Mr. BEVERIDGE. Let the amendment be stated.

The VICE-PRESIDENT. At the request of the Senator from Indiana, the amendment will again be read.

The SECRETARY. On page 11, line 5, after the word "prescribed," it is proposed to insert the following:

The Commission in prescribing any maximum rate or charge, as herein provided, shall not be authorized to receive complaints or determine differentials or preferences of one locality over another.

Mr. GALLINGER. Mr. President, it is rather astonishing to me, after some Senators have taken two or three days to discuss portions of this bill, that an article which would have occupied only ten or twelve minutes in reading, which is the best argument I have ever seen on the subject now before the Senate, should be objected to. But I am willing to let it go in the Record without reading, and to let a vote be taken.

Mr. RAYNER. Mr. President, the pending amendment as it now reads seems to me so inartificially drawn that it is absolutely fatal to the bill. If an amendment of this sort is to be offered, it ought to be drawn with a great deal of care. This amendment provides for all cases of preferentials and differentials of one locality as against another; it includes localities on the same line; and it absolutely deprives the Commission of any right to determine every question of discrimination on the same line. If the Senator from New Hampshire had worded it so as to apply to different lines or different roads furnishing competing localities, it might possibly do, although I think the provisions in the bill cover it. But this covers an inland point and a terminal point on the same line, and if there is any preference given to the terminal point over the inland point, or the inland point over the terminal point, it takes from the Commission the right to determine that. I should like to have the amendment read again, because it is a matter of vast importance, and I think is fatal to the bill.

Mr. ALDRICH. I appeal to the Senator from New Hampshire to withdraw the amendment until we can get through with the amendment pending to this section and the next section.

Mr. GALLINGER. I know of no reason why I should withdraw it. Let the Senate dispose of it.

The VICE-PRESIDENT. The Secretary will again read the amendment, at the request of the Senator from Maryland [Mr. RAYNER].

The SECRETARY. On page 11, line 5, after the word "prescribed," it is proposed to insert the following:

The Commission in prescribing any maximum rate or charge, as herein provided, shall not be authorized to receive complaints or determine differentials or preferences of one locality over another.

Mr. RAYNER. According to the amendment, they could not entertain any complaint between localities on the same line.

Mr. NELSON. I do not want to interrupt the Senator—

Mr. RAYNER. I will submit to an interruption in a minute. I did not know that an amendment of this sort would come up, but having been informed by the Senator from New Hampshire, and having observed the amendment which he introduced at an earlier stage of the session, I want to say a few words upon the subject, because I think it is one of the most important subjects before us, and I think the amendment is fatal to the bill.

I desire to emphasize what I have heretofore said at the opening of this debate upon the subject of differentials. This is a most important inquiry, and if this bill gave the right to the Commission to adjust differentials between competitive localities I doubt very much whether the bill would pass. This power would be so unlimited that I am not certain that we would be willing to confer it upon the Commission. It would virtually take the ports of entry of this country out of the hands of the railroads, who are building them up, and place them in the hands of the Commission, to destroy their business and throttle their trade and enterprise if they desired to do so, and even if the Commission were absolutely impartial, as I believe it is and will be, it would nevertheless devolve upon it a duty of such a delicate nature and of such tremendous responsibility that I do not think that any tribunal would be equal to its accomplishment.

Let us fall into no error upon this point. If the bill confers any such authority I want to know it, and if by the remotest implication it could be construed as granting it, the people who are interested are entitled to understand it. The committee of the House came to the conclusion that it did not embrace differentials. The House passed it. Relying upon that assumption, the majority of us have, I believe, entertained the same idea. The Interstate Commerce Commission does not believe that it could exercise such a jurisdiction. Every board of trade and chamber of commerce and business organization that I have heard from are all of this opinion, that this measure does not confer such power; but there are several Senators upon this floor who entertain a different idea, and who have claimed that the right exists under the phraseology of this bill. There is no question connected with this controversy of the practical importance that this is. Let me say that I do not find anything in this bill whatever that gives the Commission any right to adjust differentials. Its provisions are limited to discriminations upon the same roads. The words "unjustly discriminatory" or "unduly preferential" or "prejudicial" apply to rates and regulations and practices upon the same road, because there can be no such thing as an unjust discrimination or an undue preference between different roads supplying different territory and terminating at different points.

On the one hand, the rate or the regulation or the practice of one road can not be changed because the rate or the regulation or the practice of another road is in violation of the law. If one road charges an unreasonable rate or a discriminating rate, that would surely not justify the Commission's adjusting the rate between this road and some other road that has no connection with it by law or privity of contract. On the other hand, it is not possible that if the rate upon one road is just and reasonable that the rate can be lowered because it is higher than the rate upon some other road which is also just and reasonable. The very foundation upon which the bill rests is that the rate or practice must be unjust or unreasonable or unjustly discriminatory, and if the rate or practice is just and reasonable, then the Commission has no right to change it. The complainant must set forth that it is unjust or unreasonable or discriminatory, and if the Commission should undertake to lower a rate which did not violate the law, upon this ground, its acts would be absolutely ultra vires and null and void, and could not be enforced by judicial process.

Now, Mr. President, I propose to proceed a step further upon the proposition of the Senator from New Hampshire [Mr. GALLINGER]. In my judgment, if this bill by any implication or intendment could be construed as conferring upon the Commission the power to adjust differentials between competing roads and competitive localities, it would, under its present language, be deficient in any legislative standard by which the Commission could proceed to make that adjustment, and would therefore be held as conferring upon the Commission legislative powers and fall within the argument and objections of the Senator from Ohio that he has directed against the entire measure. There must be a legislative standard. No legislative discretion must be left to the Commission, and if the Commission, in a case where a certain rate was perfectly just and reasonable and not discriminatory, could deliberately change it because it varied from the rate of some other carrier, it would be exercising an unlimited discretion and legislative function which it does not come within our power to invest it with.

Mr. GALLINGER. Mr. President—

Mr. RAYNER. Now, let me finish this paragraph and then I will yield to the Senator.

Now, one other proposition: This bill absolutely excludes the right to adjust differentials because it does not give the right to fix or adjust rates, but the power is given to fix maximum rates. It is not within the range of possibility to adjust a differential by the fixing of a maximum rate. If, for instance, a rate was lowered upon a road between Chicago and New York, and a maximum rate established in order to meet a lower rate upon another competing road between Chicago and Baltimore, the latter road would immediately reduce its rate and keep up the differential. Let me illustrate: If there was a dollar rate between Chicago and New York upon one road and a rate of 95 cents between Chicago and Baltimore upon another road, and the Commission lowered the rate upon the first road to 95 cents, the other road, that was covering the territory between Chicago and Baltimore, would lower its rate to 90 cents, and thus maintain the differential. The Commission could not interfere, because it has no right under this bill to fix a minimum rate between Chicago and Baltimore, and it could not prevent the lowering of the rate between these places in order to meet the lower rate between Chicago and New York. I have therefore come to the conclusion that legally there is no power in this bill to adjust differentials, and practically it would be impossible for the Commission, even through arbitrary and unjustifiable process by induction, to reach this result.

Now I will answer any question I can.

Mr. GALLINGER. I simply want to suggest to the Senator that among other Senators I consulted on this question was the Senator from Maryland, and he promised me to give me the benefit of his learning and experience on this matter. Not hearing from the Senator, I have submitted the amendment, which is not entirely mine; other persons were consulted about it. I believe it is a good amendment, and that if put in the bill it will save a great deal of harm that may come from the bill without it. But under the circumstances, Mr. President, I will ask unanimous consent to withdraw the amendment that I may confer with Senators further, and it is possible we may agree upon some amendment that can be put in the bill.

Mr. RAYNER. Before the amendment is withdrawn I want to call the Senator's attention to this difficulty, and when I conferred with him it was a difficulty that struck me as very great in reference to this amendment.

Mr. GALLINGER. I remember the Senator's observation.

Mr. RAYNER. The amendment reads:

The Commission in prescribing any maximum rate or charge as herein provided shall not be authorized to receive complaints or determine differentials or preferences of one locality over another.

The trouble about that amendment is that it covers localities of the same road, and that is exactly what the Commission is to do. The Commission has power to receive complaints and to determine differentials upon the same road. It is to determine this very thing of one locality over another upon the same route. When you eliminate that from the provisions of the bill you take away from the Commission every other power it has except this.

Mr. GALLINGER. The reason I do that, if the Senator will permit me, is because I have a great deal more confidence in ability of the railroads to fix proper rates regarding differentials of this kind than I have in the Interstate Commerce Commission.

Mr. RAYNER. In my judgment, it is entirely a question of discrimination. The question of just or unreasonable rates is not a question that concerns us so much, because one witness after another has testified that there are few unjust or unreasonable rates. The principal question is a question of discrimination between localities upon the same road, and here you deprive the Commission of the right of determining the very question, and the only one of the practical questions, perhaps, that it will be called upon to determine in its entire transactions.

Mr. ELKINS. Mr. President, what is the pending question?

The VICE-PRESIDENT. The question is on the amendment of the Senator from New Hampshire [Mr. GALLINGER.]

Mr. GALLINGER. I withdraw it temporarily.

The VICE-PRESIDENT. The Senator from New Hampshire withdraws his amendment temporarily. Are there further amendments to section 4?

Mr. CLARKE of Arkansas. Mr. President, I send an amendment to the desk to be read.

The VICE-PRESIDENT. The amendment will be read.

The SECRETARY. On page 12, after line 11, insert:

The Commission shall determine, from investigation and hearing appropriate to the inquiry, the proportions of the entire traffic of any

carrier whose rate or rates has been challenged in the manner provided in this act which pertain to interstate and intrastate traffic, respectively, and when said relative proportions of said traffic are so ascertained the Commission shall consider, in fixing a just and reasonable rate under the provisions of this act, the revenue derived from intrastate traffic as part of the gross income of said carrier and make due allowance therefor in establishing the basis for prescribing said just and reasonable rate.

Mr. CLARKE of Arkansas. Mr. President, the object of the amendment is to provide means of curing what seems to me to be an obvious defect in this matter of making rates, when we consider the fact that there are two kinds of traffic to be dealt with and the problems connected with its transportation solved.

The Supreme Court of the United States, in the case of *Smythe v. Ames* (169 U. S.), has declared that the State of Nebraska, in fixing rates, can take no notice of the fact that the carrier is also engaged in interstate traffic. The contention was made in that that the rate prescribed by the Nebraska commission was an entirely proper one when notice was taken of the fact that a considerable part of the carrier's income was derived from interstate traffic, and that having reference to the entire volume of its business, the rate was not an unreasonable one.

The Supreme Court, in dealing with this contention advanced by counsel for State commission, said:

It is further said, in behalf of the appellants, that the reasonableness of the rates established by the Nebraska statute is not to be determined by the inquiry whether such rates would leave a reasonable net profit from the local business affected thereby, but that the court should take into consideration, among other things, the whole business of the company—that is, all its business, passenger and freight, interstate and domestic. If it be found upon investigation that the profits derived by a railroad company from its interstate business alone are sufficient to cover operating expenses on its entire line, and also to meet interest, and justify a liberal dividend upon its stock, may the legislature prescribe rates for domestic business that would bring no reward and be less than the services rendered are reasonably worth? Or must the rates for such transportation as begins and ends in the State be established with reference solely to the amount of business done by the carrier wholly within such State, to the cost of doing such local business, and to the fair value of the property used in conducting it, without taking into consideration the amount and cost of its interstate business, and the value of the property employed in it? If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect of its entire line and all its business, interstate and domestic. We can not concur in this view. In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business. The argument that a railroad line is an entirety, that its income goes into, and its expenses are provided for, out of a common fund, and that its capitalization is on its entire line, within and without the State, can have no application where the State is without authority over rates on the entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business.

The declarations of that opinion indicate that it is one out of which confusion and uncertainty will inevitably arise when its action in the matter of fixing interstate rates is contested. It has not heretofore presented a practical difficulty in the work of the Interstate Commerce Commission for the reason that the Commission had no power to fix rates, and therefore it had no occasion to encounter the embarrassments growing out of this decision. It is perfectly plain that it will now become a practical question, and that if the doctrine of this opinion is to be applied when the Commission undertakes to fix a rate relating to interstate commerce that no notice can be taken of the fact that the carrier is also engaged in carrying State traffic.

The only purpose of the proposed amendment is to provide a plan by which the Commission can determine in a legal way a fact which everybody knows to exist, and that the carrier is engaged in both kinds of traffic, and that it derives its gross income from both kinds of traffic. It is proposed that there shall be such a comprehensive consideration of the volume of traffic actually carried as may enable the Commission to know what will be the proper basis upon which to allow the carrier a just compensation for carrying interstate traffic. It provides a method by which an obvious defect can be cured.

In the case of *Tompkins* (reported in 175 U. S.)—a case that came up from South Dakota—the circuit judge undertook to

deal with the situation created by the case of *Smythe v. Ames*. He undertook to establish for himself a way by which he would solve the difficulty. He found, from the evidence introduced in the case pending before him, that \$10,000,000 of capital stock of the Northern Pacific Railroad was exerted in carrying on business in that State; that \$8,000,000 of that capital was being exerted in carrying on interstate business and \$2,000,000 in carrying on State traffic. Taking that for his basis, he undertook to prescribe for the railroad a reasonable rate for State business. His decree was reversed in its entirety by the Supreme Court of the United States on the ground that he had undertaken to make in person, and without the aid of a master, the calculations and computations necessary to a final decree. Because of the practice adopted by the trial court, the Supreme Court held that its decree was not based on findings made with sufficient intelligence to enable the court to say whether he was right or wrong on its real merits. The decree was reversed and the whole matter was sent back, no reference being made in the order of reversal in approval or condemnation of the plan followed.

So we are left in doubt as to what is the proper plane for the trial courts to follow. I think if the Commission is to fix the interstate rate the Commission ought to know, and it ought to have before it in an authoritative form, a finding showing the entire volume of traffic with which it is to deal, the amount of income that the carrier derives from all of it, State and interstate, and the sum that it ought to be allowed to derive from its interstate traffic. There ought to be a legislative method for the solution of this problem, to the end that it may be no longer a source which will invite litigation and lead to confusion.

I believe, therefore, some such provision as this ought to go into the law giving the Commission power to institute inquiry to determine the question as nearly as can be done, so that the several States may incidentally and authoritatively be advised as to the part of the inquiry in which each is interested, which is the volume of business with which it can deal. It will add to the simplicity and reliability of that work, and, I believe, will be a very wholesome addition to the general plan of regulation we are now seeking to establish.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Arkansas [Mr. CLARKE].

Mr. BAILEY. On that I ask for the yeas and nays.

The yeas and nays were not ordered.

Mr. BAILEY. I wish to say a word about the amendment, if it is to be voted down. I had supposed—

The VICE-PRESIDENT. The Chair will again ask if there is a second to the demand for the yeas and nays.

Mr. BAILEY. I think the amendment is important and I think it ought to be adopted, but I am willing to take a vote on it if the Senate will give me a recorded vote.

The VICE-PRESIDENT. Is there a second to the demand for the yeas and nays on agreeing to the amendment of the Senator from Arkansas?

The yeas and nays were ordered.

Mr. BEVERIDGE. Let the proposed amendment be read.

The SECRETARY. On page 12, after line 11, insert:

The Commission shall determine, from investigation and hearing appropriate to the inquiry, the proportions of the entire traffic of any carrier whose rate or rates has been challenged in the manner provided in this act which pertain to interstate and intrastate traffic, respectively, and when said relative proportions of said traffic are so ascertained the Commission shall consider, in fixing a just and reasonable rate under the provisions of this act, the revenue derived from intrastate traffic as part of the gross income of said carrier and make due allowance therefor in establishing the basis for prescribing said just and reasonable rate.

The VICE-PRESIDENT. The Secretary will call the roll on agreeing to the amendment of the Senator from Arkansas [Mr. CLARKE].

The Secretary called the roll.

Mr. SPOONER (when his name was called). I again announce my pair with the Senator from Tennessee [Mr. CARMACK]. If I were at liberty to vote, I should vote "nay."

The result was announced—yeas 27, nays 48, as follows:

YEAS—27.

Allee	Clay	Latimer	Pettus
Bacon	Culberson	McCreary	Rayner
Bailey	Daniel	McLaurin	Simmons
Berry	Dubois	Martin	Tallaferro
Blackburn	Frazier	Money	Teller
Clark, Mont.	Gearin	Newlands	Tillman
Clarke, Ark.	La Follette	Overman	

NAYS—48.

Aldrich	Brandegree	Carter	Dick
Alger	Bulkeley	Clapp	Dillingham
Allison	Burkett	Clark, Wyo.	Dolliver
Ankeny	Burnham	Crane	Dryden
Beveridge	Burrows	Cullom	Elkins

Flint	Hemenway	McCumber	Platt
Foraker	Hopkins	Millard	Scott
Fulton	Kean	Nelson	Smoot
Gallinger	Kittredge	Nixon	Sutherland
Gamble	Knox	Penrose	Warner
Hale	Lodge	Perkins	Warren
Hansbrough	Long	Piles	Wetmore

NOT VOTING—14.

Burton	Frye	Mallory	Spooner
Carmack	Gorman	Morgan	Stone
Depew	Heyburn	Patterson	
Foster	McEnery	Proctor	

So the amendment of Mr. CLARKE of Arkansas was rejected.

Mr. RAYNER. Mr. President, I have concluded to offer the amendment in reference to the broad and narrow review under section 15, instead of under section 16 as I contemplated, and I move to insert it after the word "jurisdiction," in line 9, page 11. I ask the Secretary to read it.

The SECRETARY. On page 11 of the bill, line 9, after the word "jurisdiction," the last word in the line, insert:

But such order shall not be set aside by any court unless it violates the Constitution of the United States or exceeds the jurisdiction conferred upon the Commission.

Mr. RAYNER. Mr. President, this raises the distinction between what has been called the broad and the narrow review. If I may be permitted to say so, I think both those words are misnomers and that the proper names are "the constitutional" and "the statutory review;" the statutory review, of course, always including the constitutional review.

I am in favor of the constitutional review. The review that the President of the United States has submitted to us is the broadest sort of statutory review; and I think that, in my judgment, as I shall presently try to demonstrate, whatever may be the result of the vote upon this amendment, this distinction ought plainly to get into the RECORD, so that we may all know how to vote upon it, and so that the people may understand the distinction.

I wish very much that the President of the United States—and I say it with great respect and deference—had not interfered in this legislation and had permitted us to settle this case right here in this body, where the responsibility devolves. I do not say, Mr. President, that anyone has set a trap for the President of the United States; I would not make a declaration of that kind upon this floor; but I do say, and I say it again with the greatest respect and deference to the President, that the President, unfortunately, is so constituted that he can not look at a trap without fooling with the spring. [Laughter.] Last week, after he was caught in this trap for a day or so, in some way or other he worked his way out of it, and then he kept on looking at it and walking around it and walking in and out of it until he was caught beyond all hope of escape. Now his party friends and his party enemies are vying with each other as to which one of them can get in first and participate with him in his gratuitous captivity. [Laughter.]

A few weeks ago—four or five or six weeks ago—he sent to us as his envoy extraordinary the Senator from Kansas [Mr. LONG], and he intrusted to him the mission of a constitutional review. Last Friday, without notifying the Senator from Kansas that his credentials had been revoked, he appointed in his place as minister plenipotentiary the distinguished Senator from Iowa [Mr. ALLISON], with the mission of a broad statutory review. Now, I understand perfectly well that the Senator from Iowa did not seek this appointment. I am informed that he was peacefully reposing in nocturnal innocence when this appointment was made and when these mighty honors and this distinguished servitude were thrust upon him. At any rate, we have two reviews sent here by the President—the one in the hands of the Senator from Kansas and the other in the hands of the Senator from Iowa and both of them in deadly conflict with each other.

I say here, in passing, that both of these ministers are equally well accredited. The certificate of the Senator from Kansas had the impress of the royal authority, and the testimonials of the distinguished Senator from Iowa not only bear the imperial seal, but they are authenticated in a manner that ought to give them absolute authenticity by the coat of arms of the Senator from Rhode Island [Mr. ALDRICH]. [Laughter.]

Mr. President, we understand what all this means here, but the people do not understand it. We understand that the President is no longer caressing the junior Senator from Iowa [Mr. DOLLIVER] and the Senator from Kansas, but that he has transferred his affections and is now clasping to his bosom, with the fondest and most fervent devotion, the senior Senator from Rhode Island. [Laughter.]

The President tells us that these two reviews which he has sent in here are one and the same thing, but, Mr. President, they are as widely different as it is possible for two divergent

propositions to be. The one is the review under the Constitution, which you can not eliminate without invalidating your law; the other is the broad statutory review, which permits the courts to try the cases *de novo* and in the same manner as if no such body as the Interstate Commerce Commission had ever existed upon the face of the earth.

The one, the review of the Senator from Kansas, confines the court within a given compass—the compass of the Constitution; the other extends to the utmost limits of their jurisdiction. The one leaves the rate-making power with the Commission; the other, as I shall presently show, transfers the whole controversy to the court and renders the Commission absolutely impotent and powerless to accomplish the object and purposes of its creation.

Let us see whether I am right or not. I will guarantee to any probationer or apprentice in his profession, if this review passes and he will take this case into court, I will stand surety and sponsor for him that the courts, without hesitation, will decide that they have a right to try the whole case from its inception to its completion as if no proceeding whatever had taken place under it.

What is this review? The original Hepburn bill gives the venue. Giving the court the venue does not give it jurisdiction. It says the venue—

Mr. ALDRICH. Will the Senator pardon me a moment?

Mr. RAYNER. I will if I can get two or three minutes more. I must press about an hour's thought into fifteen minutes. I do not object to an interruption, if you will not object to my taking two or three minutes beyond the fifteen minutes allowed.

Mr. ALDRICH. I can not make any such arrangement as that.

Mr. RAYNER. Well, then, if the Senate will give me unanimous consent to speak beyond the limit—because this is a very important matter—I will not trespass over five minutes beyond the time. I hope this time is not being counted against me, Mr. President.

Mr. ALDRICH. Mr. President—

Mr. RAYNER. What does the Senator want to know? Go on and ask me a question, if you wish.

Mr. ALDRICH. The question I was about to ask—

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Rhode Island?

Mr. RAYNER. For a question; yes.

Mr. ALDRICH. I desire to ask the Senator from Maryland whether he has changed his opinion in reference to the difference between just compensation for services rendered and a just and reasonable rate? I asked him when he was addressing the Senate some time ago, whether there was any difference, and he said he thought there was not; but I suppose from his opening remarks that he has changed his opinion, and that he is guilty of what he is accusing the President of. The Senator from Maryland seems certainly to have changed his opinion in the opposite direction.

Mr. RAYNER. Mr. President, the Senator from Rhode Island evidently does not understand what my opinion was; but we all understand what the President's opinion is, because we have got here both his opinions in conflict with each other.

The question to which the Senator from Rhode Island refers has nothing whatever to do with the proposition I am talking about. I am talking about the distribution of the jurisdiction given to the courts. I have never changed my mind about the proposition I first suggested here in connection with just and reasonable compensation. I was in favor of the amendment of the Senator from Texas, which provided that the court should determine whether or not there had been just compensation, and that that should be the constitutional question which the court should pass upon; but I am now upon an entirely different branch of the subject, which has no connection whatever with the question the Senator is addressing to me.

Mr. ALDRICH. Mr. President—

Mr. RAYNER. You will have to let me go on.

Mr. ALDRICH. Just one sentence.

Mr. RAYNER. I have no time to lose.

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Rhode Island?

Mr. ALDRICH. Only for a single sentence.

Mr. RAYNER. Very well; but let it be a short sentence.

Mr. ALDRICH. Yes; a very short sentence. The constitutional question is whether just compensation is afforded by rates prescribed. The statutory question is whether just and reasonable rates are fixed; and there is absolutely no distinction whatever between the two.

Mr. RAYNER. That just shows how little the Senator from Rhode Island knows about the legal environment of this entire question. [Laughter.] If there are two propositions on the

face of this earth that are separate from each other, it is whether or not the courts shall try the question of just compensation under the Constitution or whether they shall try the question whether the Commission has fixed a reasonable rate, which is an entirely different question from the question whether or not the carrier has received just compensation under the Constitution.

Mr. ALDRICH. Mr. President—

Mr. RAYNER. Let me proceed a minute, because this is a very important matter, and I really think, Mr. President, that the time ought to be extended five or ten minutes upon it; but if Senators object, I will make half of my speech now, and I will make the other half of it when the Senator from Iowa [Mr. ALLISON] offers his amendment, because I intend to say what is necessary on this subject. So I will make the first half of my speech now.

Mr. President, this is the distribution of jurisdiction under the Constitution—Article III, section 2.

In distributing that jurisdiction we can give any part of it we want to inferior courts. You can give them the right to try a constitutional question, or you can give them the right to try any other question you wish. In the jurisdiction the President has made he gives them the unlimited and the unqualified right to try the entire question. If you will read over the clause you will find when you put the venue in your court you say the court shall have jurisdiction of every bill that is filed for the purpose of setting aside, annulling, enjoining, or suspending any order, and when you come to put the jurisdiction, you put it in an equal degree and with the same latitude that you give the venue.

Mr. ALDRICH rose.

Mr. RAYNER. I can not now stop for an interruption. I am sorry that I can not do so; but the Senator will appreciate why I can not do so.

I say, therefore, Mr. President, when you give the full venue and full jurisdiction all that the courts will do will be to take up the case and try it over again; there is nothing else for them to do. If anyone is in favor of constitutional jurisdiction in a court, why not say so? Why not provide in this amendment as the President first provided? Just let us look at his first amendment a moment. The President's first amendment:

The court is to determine whether the order complained of was beyond the authority of the Commission or in violation of rights secured by the Constitution.

That is the first amendment. That is all right, and I am willing to vote for that. If the President had stood his ground and not surrendered so quickly as he did, we could have passed this amendment. This is the constitutional amendment.

The other amendment is under section 2 of Article III of the Constitution. You are distributing jurisdiction and you are giving them unlimited jurisdiction, because you are giving them unlimited venue, and you make your jurisdiction equivalent to your venue. In other words, wherever you give a venue you give jurisdiction, and you give a venue in every case where you go into court to set aside, sustain, enjoin, or annul an order. Therefore you have given the broadest statutory jurisdiction it is possible to give. That is beyond any idea contemplated by any Senator who has been in favor of a broad review. It is an absolute surrender upon this entire subject, and I want to congratulate the Senators who are in favor of this broad review upon having achieved this signal victory, and in congratulating them—and I am not impugning the motives of any one in favor of the broad review—I want to say that the President ought not to have changed his ground as precipitately as he has done; but I want to congratulate them on the signal victory they have gained, and I want to congratulate every railroad president in the United States and all their conquering retinue of counsel upon the great triumph they have attained.

It is an unfortunate thing, Mr. President—deplorable—that just at the very moment when political considerations were being eliminated; when elements in both parties were uniting upon a proposition that was acceptable to the people, and when the prize was within our hands that we had been struggling for for months, that the President, through executive interference upon the most vital point in the bill, should compel his party and compel us to accept a subterfuge and proclaim an unconditional surrender.

The VICE-PRESIDENT. The Senator's time has expired.

Mr. RAYNER. I will finish the balance of my speech when the Senator from Iowa shall offer his amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Maryland [Mr. RAYNER].

Mr. LONG. Mr. President, in the limited time I have to discuss this question I shall confine myself to the discussion of these different amendments and shall later refer to the pleasant

reference which the Senator from Maryland [Mr. RAYNER] made to myself as the author of a pending amendment.

Mr. RAYNER. As the author of the pending amendment. Oh, no. The Senator was the author of the old amendment.

The VICE-PRESIDENT. Does the Senator from Kansas yield to the Senator from Maryland?

Mr. LONG. I said that I was the author of a pending amendment.

Mr. RAYNER. I thought you said that you were the author of the pending amendment.

Mr. LONG. I did not make that statement.

Mr. President, this controversy has been as to the difference between a broad and a limited court review. I agree with the Senator from Maryland that those words do not properly define the difference between the various kinds of court review. In my opinion, this bill as it came to us from the House without any amendment as to the court review or with the amendment which I proposed, or with the amendment proposed by the Senator from Iowa [Mr. ALLISON] does not differ in any particular. The extent of judicial interference with rates made by the Commission under the House bill unamended, or under my amendment, or under the amendment of the Senator from Iowa would be the same.

The controversy at the time I presented the amendment was precipitated by the effort made by the Senator from Ohio [Mr. FORAKER], the Senator from Massachusetts [Mr. LODGE], and other Senators to secure what in fact was a broad review.

The difference between a broad review and a limited review is not that, under the first the court would go into the whole question, and would not do so under the second. No Senator has taken the position that in a suit brought in court to set aside an order of the Commission that the court would not examine all the questions necessary to ascertain whether the order should be suspended. The question is, after completing the examination, Shall the order be set aside?

The Senator from Ohio [Mr. FORAKER] in his speech defined what I understand to be a broad review. It is one that confers upon the court the duty of trying anew the questions that were tried by the Commission and to come to a conclusion upon the facts independent of the conclusion of the Commission. The Commission is authorized to prescribe a just and reasonable rate, and a broad review is one that imposes the duty upon the court on review to ascertain whether *in fact* the rate is just and reasonable. That has been, as I understand, the contention of Senators who have been endeavoring to put into this bill a broad review amendment.

broad review amendment. Here is what the Senator from Ohio said in his speech as to what he understood to be a broad review:

Fortunately some of the most important of the questions to which attention has been called can not be withheld from the courts. But the power to review the question as to whether a rate condemned or a rate made by the Commission in a given case is reasonable is, unfortunately, not one of these. The making of a rate is a legislative act, and legislative discretion of the Commission in determining what is a reasonable rate can not be interfered with by the courts in the absence of special statutory authority, unless the rate be fixed so high that it is extortionate to the shipper, or so low that it is confiscatory as to the carrier.

Then, discussing it further, he said:

But between extortion on the one hand, and confiscation on the other, there is, in most cases, a considerable latitude within which the action of the Commission, without special statutory provision for review of it by the courts, would be final and conclusive.

In my speech of April 3, 1906, the following colloquy occurred between the Senator from Ohio and myself, showing the kind of review he desired:

Mr. LONG. Possibly the Senator was not in the Chamber when I read from his speech, in which he defined the kind of review he desired in this bill. As I understand the Senator's language, he wishes a review that will give the court the authority to pass upon the reasonableness of a rate which is between one that is so high as to be extortionate to the shipper and so low as to be confiscatory to the carrier. The Senator wants a provision in the bill that would authorize the court to pass upon such a rate and revise the judgment of the Commission.

Mr. FORAKER. And so I do, Mr. President.

Mr. LONG. That is what I thought.

Mr. FORAKER. And not only did I contend for that, but I contended that the court ought to have the power conferred upon it in making this review to determine whether the rate that was condemned as unreasonable was in fact unreasonable, or whether it was a just and reasonable rate that should not have been condemned; and the court should have the power—and it could not have it unless we conferred it upon it—of determining whether or not the rate suggested was between the extremes of confiscatory and extortionate, and, therefore, a reasonable and just rate which the Commission had a right under the command of a statute to prescribe.

Mr. LONG. I so understood the Senator.

I think the last statement of the Senator from Ohio makes it very plain as to what he wants. He wants the court given authority by a provision for review to revise a rate that is somewhere between a rate that is so high that it is extortionate to the shipper and a rate that is so low that it is confiscatory to the carrier, both of which will now be set aside without any special statutory authority. He wants

a provision for review authorizing the courts to revise and set aside rates between those two extremes.

Mr. HOPKINS. And a rate that has been set aside also.

Mr. LONG. And the rate of the carrier that has been set aside by the Commission.

To the same extent are the remarks of the Senator from Massachusetts [Mr. LODGE], who was the first Senator to argue here in favor of a broad review. In his speech he said:

Finally, there should be ample provision for an appeal to—or, more properly, a review by—courts of competent jurisdiction sitting in equity, not only as to whether the rate is confiscatory, but also whether it is just and reasonable, and an arrangement should be made by law for the rapid disposition of all such cases.

If Congress confers upon the Commission the duty of determining and prescribing a just and reasonable rate and then imposes upon the courts the duty of ascertaining whether the rate fixed by the Commission is in fact just and reasonable, then the whole duty is imposed on the courts on review that is conferred upon the Commission, and, under these circumstances, there is no necessity for a Commission. The whole rate-making power is conferred on the courts on review, which I do not believe they will assume. By examining the different court review amendments that have been offered, we can understand very clearly the difference between an amendment which seeks to impose upon the courts the same duty that is imposed upon the Commission and one that does not. The broadest review provision I know of was that contained in the Esch-Townsend bill, which passed the House last session. This provision was the first suggested to the friends of this measure by the Senator from Rhode Island [Mr. ALDRICH] as an amendment to this bill and rejected by us. Let me call your attention to the provision. After providing for the fixing of the rate by the Commission, it says:

Any person or persons directly affected by the order of the Commission, and deeming it to be contrary to law, may institute proceedings in the court of transportation, sitting as a court of equity, to have it reviewed, and its lawfulness, justness, or reasonableness inquired into and determined.

Every question submitted to the Interstate Commerce Commission would, under this provision of the Esch-Townsend bill, be submitted to the court of transportation.

Mr. SCOTT. And there were only 11 votes in the House against that bill.

Mr. LONG. But it was abandoned at this session and the Hepburn bill was reported instead.

The Senator from Ohio certainly knows how to draw a broad review amendment, and I wish to call attention to the amendment he offered to this bill. I understand it is similar to the review provision in the Ohio railway law.

Mr. FORAKER. It is an exact copy.

Mr. LONG. It is an exact copy of the provision in those statutes.

Mr. FORAKER. I did not draw it at all.

Mr. LONG. It reads, referring to the suit authorized to be brought against the Commission—

to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service fixed in such order is unreasonable.

It further provides that—

In all actions under this section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that the order of the Commission complained of is unlawful or unreasonable, as the case may be.

The question of the reasonableness and justness of the order can be inquired into by the courts, if they will assume the jurisdiction under the Esch-Townsend bill and under this amendment of the Senator from Ohio.

Now, taking the document that was printed at the request of the Senator from Pennsylvania [Mr. KNOX], we find that provisions for review that impose upon the courts the consideration of the same questions that are conferred upon the Commission are found in the following States:

ALABAMA.

That upon the trial of said cause the order of the railroad commission shall be prima facie evidence that the thing ordered to be done was correct, reasonable, and just, and the burden of showing that such order is *not correct, reasonable, and just* shall be upon the railroad or railroads failing or refusing to comply with the order of said railroad commission.

KANSAS.

And said court may set aside, vacate, or annul one or more or any part of any of the regulations, orders, findings, or decisions adopted by the said board which shall be found to be *unreasonable, unjust, oppressive, or unlawful* without disturbing others.

MINNESOTA.

Upon such appeal, and upon the hearing of any application by the commission or by the attorney-general, for the enforcement of any such order made by the commission, the district court shall have jurisdiction to, and it shall *examine the whole matter in controversy, including matters of fact as well as questions of law*, and to affirm

modify, or reverse such order in whole or in part, as justice may require.

MISSISSIPPI.

But in trials of cases brought for a violation of any tariff of charges as fixed by the Commission, it may be shown in defense that such tariff so fixed was *unreasonable* and *unjust* to the carrier.

TEXAS.

In all trials under the foregoing article, the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulation, order, classification, act, or charges complained of, are *unreasonable* and *unjust* to it or them.

WASHINGTON.

Any railroad or express company affected by the order of the Commission and deeming it to be contrary to the law, may institute proceedings in the superior court of the State of Washington in the county in which the hearing before the Commission upon the complaint had been held, and have such order reviewed and its *reasonableness* and *lawfulness* inquired into and determined.

WISCONSIN.

Any railroad or other party in interest being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or service, may commence an action in the circuit court against the commission, as defendant, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order, is unlawful, or that any such regulation, practice or service, fixed in such order, is *unreasonable*, in which action the complaint shall be served with the summons.

Examples of limited review provisions are found in this bill as it came from the House of Representatives without amendment, or with the amendment which I proposed, or with the amendment which the Senator from Iowa [Mr. ALLISON] proposed. The following States have limited review provisions:

LOUISIANA.

If any railroad, express, telephone, telegraph, steamboat and other water craft, or sleeping-car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rules, charge, order, act, or regulation, adopted by the commission, such party may file a petition setting forth the cause or causes of objection to such decision, act, rule, rate, charge, classification, or order, or to either or to all of them, in a court of competent jurisdiction, at the domicile of the commission, against said commission as defendant, and either party to said action may appeal the case to the supreme court of the State, without regard to the amount involved, and all such cases, both in the trial and appellate courts, shall be tried summarily, and by preference over all other cases.

NORTH CAROLINA.

Provided, That any company may appeal to the judge of the superior court in term time and thence to the supreme court from any determination of the commission fixing or refusing to change the rate of freight or fare.

NORTH DAKOTA.

Any railroad, railroad corporation, or common carrier subject to the provisions of this article, or any other person interested in the order made by the commissioners of railroads may appeal to the district court of the proper county in the judicial district of this State from which the complaint arose, and which is the subject and basis of the order, from any order made by the commissioners of railroads regulating or fixing its tariffs or rates, fares, charges, or classifications, or from any other order made by said commissioners under the provisions of this article by serving a notice in writing upon the secretary of said commissioners, or any one of said commissioners, within twenty days after such railroad, railroad corporation, or common carrier shall receive notice from such commissioners of the making and entry of such order.

SOUTH DAKOTA.

Whenever any common carrier, as defined in and subject to the provisions of this article, shall violate or refuse or neglect to obey any lawful order or requirement of the said board or railroad commissioners, it shall be the duty of said commissioners, and lawful for any company or person interested in such order or requirement, to apply in a summary way, by petition to the circuit court in any county of this State in which the common carrier complained of has its principal office, or in any county through which its line of road passes or is operated, or in which the violation or disobedience of such order or requirement may happen, alleging such violation or disobedience as the case may be; and the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of as the court shall deem reasonable, and such notice may be served on such common carrier, it or its officers, agents, or servants in such manner as the court shall direct; and said courts shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises.

The amendment of the Senator from Iowa provides that "and jurisdiction to hear and determine such suits is hereby vested in such courts." What words should be added to make it an amendment in which the court would be invited to go into all the questions that were pending before the Commission? I call the attention of the Senator from Maryland to what I think should be added to make the amendment of the Senator from Iowa a broad review. It should read like this:

And jurisdiction to hear and determine in such suits whether the rate fixed by the Commission is in fact just and reasonable, is hereby vested in such courts.

Those are the words which the Senator from Ohio wanted in a review amendment; those are the words which the Senator from Massachusetts wanted to insert; those words are not in this amendment now. Or it could be made broad in this form:

And jurisdiction to hear and determine in such suits the *justness* and *reasonableness* of the rate fixed by the Commission, is hereby vested in such courts.

In both of these suggested amendments, if adopted, the attempt would be made to confer the rate-making power on the courts on review.

It will be observed that the difference between a broad and limited court review is that in the broad review the duty is imposed upon the court to ascertain whether the rate fixed by the Commission is in fact just and reasonable. This is the same duty that Congress imposes upon the Commission, and, if after imposing the duty upon the Commission, Congress imposes the same duty upon the court, it is impossible to determine why a Commission is needed.

In the limited review, jurisdiction is conferred upon the court, making it clear that it is not the intention of the legislature to prevent a review of the orders of the Commission by the courts, but no words are used that can be construed to mean that the legislature intended that the court should inquire into the facts and revise the judgment and discretion of the Commission.

Of course, broad review amendments are predicated upon the assumption that the courts would assume the duty of revising the judgment and discretion of the Commission if invited to do so by Congress in this legislation. I do not believe they would do this.

Mr. ALDRICH. Will the Senator allow me to ask him a question? I do not want to interrupt him if he objects.

The VICE-PRESIDENT. Does the Senator from Kansas yield to the Senator from Rhode Island?

Mr. LONG. Certainly.

Mr. ALDRICH. Does the Senator believe that the bill as it came from the House of Representatives gave to the courts jurisdiction over suits brought to set aside or suspend the orders of the Commission?

Mr. LONG. I do, and I so stated in my remarks on the 3d of April.

Mr. ALDRICH. I remember what the Senator said, and I will say, as the Senator from Maryland [Mr. RAYNER] has brought my name into this debate, that, in my judgment, the amendment now offered by the Senator from Iowa does not go one single step beyond that; that it simply confers in terms upon the courts jurisdiction which the Senator from Kansas and other Senators who are in favor of this legislation have always contended was accomplished by the House bill.

Mr. RAYNER. May I ask the Senator a question?

The VICE-PRESIDENT. Does the Senator from Kansas yield to the Senator from Maryland?

Mr. LONG. Yes.

Mr. RAYNER. Will the Senator from Kansas be willing to vote in favor of his own amendment?

Mr. LONG. Certainly. But you have not presented my amendment.

Mr. RAYNER. There is only one word in it different. Take out the word "jurisdiction" and insert the word "authority," and it is your amendment. I will put in the word "authority." Now, will you vote in favor of your own amendment?

Mr. LONG. Offer my amendment, and I will vote for it.

Mr. RAYNER. I will offer it.

Mr. LONG. You can not offer it in my time.

Mr. RAYNER. I ask the Senator to yield to me for a moment.

The VICE-PRESIDENT. Does the Senator from Kansas yield to the Senator from Maryland?

Mr. LONG. Not to offer an amendment now.

Mr. RAYNER. You challenged me to do it.

The VICE-PRESIDENT. The Senator from Kansas declines to yield.

Mr. RAYNER. If he does not yield, of course I can not offer the amendment.

Mr. LONG. As I stated before, I consider that the bill as it came from the House, without any amendment, provided for a limited review; that the courts would not try the same questions de novo that were tried by the Commission and pass on the facts without regard to the findings of the Commission. All the review amendments that seek to impose the duty upon the courts that is imposed by this bill upon the Commission are based upon the theory that the courts will assume that jurisdiction. As I stated in the speech I made on the 3d of April, I do not believe the courts, under any review amendment that may be made, would exercise this jurisdiction. My amendment did nothing more than to make clear in words the limitations that the Supreme Court of the United States has prescribed for itself in the consideration and determination of these questions.

The two leading cases in which the Supreme Court has considered rates made under the authority of State legislatures have been the Reagan case (154 U. S., 362) and Smyth v. Ames (169 U. S., 466). The Texas statute gave a broad review to

the court in the consideration of orders made by the commission in the following language:

In all trials under the foregoing section the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them.

But the Supreme Court, in its consideration of the schedule of rates made by an order of the Texas Railway Commission, confined its examination to the question as to whether or not the rates were so unjust and so unreasonable as to take the property of the carrier without just compensation. Justice Brewer for the court said:

The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable, and such as to work a practical destruction to rights of property, and if found so to be, to restrain its operation.

It will be observed that the court limited its inquiry into the question as to whether or not the body of rates prescribed by the legislature was so unjust and so unreasonable as to work a practical destruction of the rights of property. In this case Justice Brewer also announced the doctrine that courts will restrain the illegal acts of a special tribunal when it has exceeded its authority, even though the acts were done under a valid law. He said:

Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts.

In the case of *Smyth v. Ames* (169 U. S., 466) the statute of Nebraska gave a broad review in the following language:

Whenever any railroad company or companies in this State shall, in a proper action, show by competent testimony that the schedule of rates prescribed by the act is unjust and unreasonable, such railroad or railroads shall be exempt therefrom as hereinafter provided.

Notwithstanding this statute, the court confined itself in that case to the same questions that were considered in the *Reagan* case—that is, as to whether the property rights of the carrier secured by the Constitution of the United States had been invaded.

There are three recent cases of the Supreme Court in which the extent of judicial interference with the rates made under legislative authority has been fully considered.

The first is the *San Diego Land Company* case (174 U. S., 754), a unanimous decision, in which Justice Harlan, speaking for the court, said:

But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public—that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.

He further said:

The only issue properly to be determined by a final decree in this cause is whether the ordinance in question, fixing rates for water supplied for use within the city, is to be stricken down as confiscatory by its necessary operation, and therefore in violation of the Constitution of the United States.

The second case is that of the *Minnesota Railroad Company v. Minnesota* (186 U. S., 257), which was also a unanimous decision, in which Justice Brown, speaking for the court, said:

The presumption is that the rates fixed by the commission are reasonable and the burden of proof is upon the railroad companies to show the contrary.

He further said:

It is sufficient, however, for the purpose of this case to say that the action of the Commission in fixing the rate complained of as to this particular class of freight has not been shown to be so unjust or unreasonable as to amount to a taking of property without due process of law, and we therefore conclude that the judgment of the Supreme Court must be affirmed.

It will be observed that the Supreme Court in this case confined itself to the question as to whether or not the rate complained of was so unjust or unreasonable as to amount to a taking of property without due process of law. The Minnesota statute gave the courts the broadest kind of review, as I have heretofore shown, and yet the Supreme Court of the United

States in considering the subject confined itself to the consideration of the constitutional questions involved.

The third case is that of the *San Diego Land Company v. Jasper* (189 U. S., 439), also a unanimous decision, in which Justice Holmes, speaking for the court, said:

We do not sit as a general appellate board of revision for all rates and taxes in the United States. We stop with considering whether it clearly appears that the Constitution of the United States has been infringed, together with such collateral questions as may be incidental to our jurisdiction over that one.

The VICE-PRESIDENT. The Chair is obliged to inform the Senator from Kansas that his time has expired.

Mr. LONG. I will avail myself of the liberty of speaking somewhat further on another amendment.

Mr. ALLISON. Mr. President, I perhaps should state my acknowledgments in the beginning to the Senator from Maryland [Mr. RAYNER] who, in a way of pleasantry, undertakes to give me credit which I do not deserve, and also to give the President credit which he does not deserve.

The amendment of the Senator from Maryland, which is under discussion at this time, is practically the amendment which I have offered to this bill, and no amount of declamation and positive and often-reiterated assertion can change the situation of this bill. I want to call the attention of the Senate, first—and I will only occupy a minute—to the framework of this bill. The framework of the bill, if it is to be worth anything, should contain a provision whereby a commission, administrative in its character, shall carry out the legislative will, as found in this bill, if it shall become a law.

The Commission is clothed by this bill with the power of Congress, as I understand, and when it makes a decision and a declaration, it has the force and power of a legislative act, or else we have spent here three months or more in vain. Either the making of a rate is a legislative act or it is nothing, under the Constitution and our system of Government. The judicial power can not be invoked to make a rate, nor can the executive power. Therefore, in acting here we are seeking, within constitutional limits, to devolve upon a commission of seven picked and enlightened men, power to deal with this great and complicated question as related to 250,000 miles of railway.

Does anybody believe that it is possible for the courts of the United States to deal with this question under the Constitution? The jurisdiction of this question does not lie in the amendment which I have offered, nor does it lie in the amendment which the Senator from Maryland has offered. If we are ever to exercise governmental power over the railways it must be done here in this body and in the other Chamber. It can not be done anywhere else. If we have not the power to delegate to a commission the details of this legislation as respects what is a reasonable rate, then it can not be done by any body, and we are relegated in this country of ours, under constitutional limitations, to saying that the railroads of this country, without let or hindrance, may make their own rates without revision.

We must select for the execution of this law seven men who are the fit men of this country, familiar with this great subject, and we must rely upon their intelligence and their integrity to deal with this question, and we must give them, and we propose to give them in this bill, the necessary power to do it. But, of course, they must exercise that power within constitutional limitations. Those constitutional limitations are familiar to us all. They are that the rates fixed by the Commission shall provide a just compensation to the carrier; and that we would have to do if we sat down in this Chamber and fixed a schedule of rates for every railroad in the country. Although we have the legislative power to do that, it is impossible for us to exercise it, and everybody knows it is impossible. Therefore we must, within the powers we have, without trenching absolutely upon the legislative power, grant to the Commission the power to enable them to establish a just and reasonable rate under the conditions of this bill.

What is a just and reasonable rate? I heard the Senator from Maryland [Mr. RAYNER] himself describe a just and reasonable rate as a just compensation, using the constitutional term. We have been trying to do that for a long time. This is the first time that the question of fixing a rate has ever come up in Congress. No Congress has ever before put in the hands of a commission the power that this bill proposes to give to them.

It has been said frequently, I know, and it has been said on this floor in debate, that in the legislation of 1887 we gave that power to the Commission. I was present here when that whole debate occurred, and I wish to say that it is not possible that the Congress at that time intended to give this power to the Commission. It was discussed more or less frequently, but

you may ransack that debate, which continued for six weeks, and you will find that in no case was it proposed to give to the Commission the power of fixing rates, either maximum or minimum or both. The effect of that act was to make the Commission nothing but an arbitration board or referee. They could not even enforce any of their own orders. They were obliged, if one of their orders was disobeyed by a railroad company, to go to the court for the purpose of having it enforced. Although it may be that there was no objection to the power of making rates being given to the Commission for some time after the Commission was organized, it was not in the contemplation of the men who framed that act that there should be power given to the Commission to fix rates of any kind.

Now, for the first time, we are confronted with this specific question. We all agree that we can not here directly make rates or revise rates. Hence we are seeking to establish a commission of the highest character and intelligence, which shall deal with this question as an administrative board. When they have dealt with it, their order stands as the judgment and the will of Congress, or else it is nothing. The basis of this whole transaction, when the Commission has exercised its authority and issued its order, is equivalent to a statute. What do the courts do in case we pass a law here upon this subject and a suit is brought to test that law? The test is its constitutionality and nothing else. It is that, or it is that this administrative board of ours has exceeded its authority. Those are the only two questions which can possibly come up under this bill under any circumstances or any situation whatever.

Why does the Senator from Maryland, in his peculiar and euphonic way, undertake to say that here is an opportunity for the judiciary of the United States to deal with every question that can possibly come up under this bill? Mr. President, it does not require a lawyer of many years standing to know that his construction of this amendment is an impossible construction. I will venture the statement that there is no court in this country which will in the slightest degree give heed to the suggestions the Senator has made. I know there are a great many statutes of the character of this proposed legislation in the States. State after State has given to the courts full and complete review of acts of their commissions, and I want the Senator from Maryland or some other Senator to show me where the Supreme Court has gone one step beyond the discussion of the constitutional power of the Commission or the question whether it had exceeded its authority. Where is the decision that goes beyond that? I have listened to these debates with interest and with great benefit to myself, but I know of no opinion from any judicial body which undertakes to say that every little act of the Commission may be reviewed by the court.

That is the view I take of this amendment of mine; it is called mine on the face of these papers. The Senator from Maryland does me the honor to say that I am merely acting for the Executive as respects this amendment. I will deal with that later when the Senator from Maryland has had another opportunity to be heard. I hope there will be a sufficient number of amendments offered to enable me also to say a few words on that subject.

So I conclude, Mr. President, by saying that the amendment of the Senator from Maryland, this bill as it came to us from the House, and the amendment which I had the honor to offer through my friend the Senator from Illinois [Mr. CULLOM] a day or two ago are all of them limited as respects the jurisdiction of the courts to two questions—(1) whether or not the Commission has acted beyond its authority, and (2) whether the decision of the Commission fixes a just and reasonable rate and gives just compensation, because I remember how thoroughly the junior Senator from Texas [Mr. BAILEY] elaborated that question about just and reasonable rates and just compensation. He treated them as I treat them now, as synonymous.

The VICE-PRESIDENT rapped with his gavel.

Mr. ALLISON. That is the only question involved in the amendment of the Senator from Maryland.

The VICE-PRESIDENT. The time of the Senator from Iowa has expired.

Mr. BAILEY. Mr. President, it is not entirely creditable to the candor of the Senate to say that for three long months this controversy has been revolving around the question as to the character of a court review, and now, after all of this long debate, it is suddenly discovered that all court reviews at last mean the same thing.

Mr. ALLISON. Will the Senator allow me for a moment?

Mr. BAILEY. Certainly.

Mr. ALLISON. I did not say all "court reviews." I said the several propositions that are now pending.

Mr. BAILEY. The Senator will find that if he can sustain the proposition that the court review, as it will be defined in the

bill with his amendment, is the same as the court review proposed by the Senator from Maryland, then all court reviews at last come to the same complexion. The Senator from Iowa makes this mistake. He assumes that Congress is compelled to confer upon the courts all the jurisdiction which this bill, with his amendment, confers. But, sir, nothing could be further from an accurate statement of the law than that. The only jurisdiction which Congress is compelled to confer upon the courts is the jurisdiction to hear and determine the carrier's constitutional right to a just compensation for his property. Indeed, Congress is not compelled to confer even that, in the bill, but if it failed to do so and if it did not exist, independently of this bill, under the existing law, then the bill itself would be unconstitutional and void. The carrier could not affirmatively assail it, because the court can entertain jurisdiction of no suit except when authorized to do so by an act of Congress, but when the Government summoned the offending carrier into court to answer for its failure or refusal to obey the law, the carrier could then plead that the law was not binding upon its conscience or its conduct, because it was contrary to the constitutional guaranty that it shall not be deprived of its property without the due process of law.

But this bill, as it is now proposed to amend it, goes far beyond the question as to the constitutional guaranty of a just compensation and beyond the submission to judicial cognizance of those practices and regulations which involve a property right. This bill provides—and I invite the attention of the Senator from Iowa to the breadth of the language—

The venue of suits brought in any of the circuit courts against the Commission to enjoin, set aside, annul, or suspend any order—

That would be broad enough, but this amendment does not stop with that—

or requirement of the Commission; * * * and jurisdiction to hear and determine such suits is hereby vested in such courts.

Congress is not required to submit every order or requirement of the Commission to judicial scrutiny. Congress can authorize the Commission to do many things into which the courts are not entitled to inquire. Indeed, sir, Congress can authorize the Commission to do everything except to deprive the carrier of its property without due process of law and without a just compensation. Subject to those limitations, Congress can authorize the Commission to do whatever Congress chooses, and can expressly exclude the acts of the Commission from judicial inquiry.

Does the Senator from Iowa exclude the courts from enjoining anything which the Commission is authorized to do? Every act, important or unimportant, affecting a property right or not affecting a property right, is by the express terms of this amendment submitted to the judgment of the court; and therein lies the difference between a broad review and a narrow review. A broad review is a statutory one—a review that subjects to the determination of the court those matters which constitutionally could be excluded from judicial cognizance. A narrow review is one which authorizes the court to hear and determine only those matters and things which, because they involve a property right, could not be excluded from judicial determination. If the Senator from Iowa is entirely certain that he wants only to submit to judicial cognizance what can not be excluded, the way is easy. Three lines in this bill can accomplish it. But it is the determination of our friends on the other side to open the doors of the court, not only as wide as they can swing, but it appears to me that they have determined to take the doors off the hinges, so that Congress will not hereafter be tempted to narrow that review.

I congratulate the Senator from Rhode Island [Mr. ALDRICH], who denies the soft impeachment of the Senator from Maryland, and modestly disavows any part in this arrangement; and yet from the beginning of this long debate to this day the one insistence of the Senator from Rhode Island has been for a broad court review. He has at last obtained what he wants, and hence he is so well satisfied with this amendment. Some Senators may not know what they have agreed to do, but the Senator from Rhode Island is not one of them.

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Rhode Island?

Mr. BAILEY. I do.

Mr. ALDRICH. I stand exactly where the Senator from Texas stood when he said in this presence: "I will not vote for any bill that does not open wide the doors of the courts of the United States to all the people of the United States."

Mr. BAILEY. Oh, no! The Senator stops short of the quotation—"to protect their constitutional rights."

Mr. ALDRICH. That is an addition which the Senator now makes to his original statement.

Mr. BAILEY. The Senator is mistaken. The Senator from Texas said then and he says now he will not be a party to any proposition which attempts to cheat the Constitution and to deprive the courts of a power which is constitutionally theirs. That is what I said then. That is what I say now.

Mr. ALDRICH. The people of the United States have no rights—no property rights or other rights—except such as are guaranteed by the Constitution of the United States.

Mr. BAILEY. The Senator from Rhode Island is mistaken again. We have numerous political rights which—

Mr. ALDRICH. I should perhaps have said property rights.

Mr. BAILEY. Which are under no guaranty of the Constitution of the United States. We have numerous personal rights which are not secured by any constitution, State or Federal. Indeed, Mr. President, the only property right which we enjoy under the Constitution of the United States is that our property shall not be taken from us without due process of law, or without a just compensation. All the property rights we hold subject to the control and disposition of the Federal Government are under those two limitations. Those limitations I cheerfully respect, and, Mr. President, if I were going to make another constitution, I would write in it those same limitations, just as our fathers wrote them in the one under which we must now legislate. I believe in a written constitution. I will grant to no body of men that can be chosen the right to legislate, without limitation, upon the essential rights of the citizen. That is the difference between a Democrat and a Republican. That is what makes us Democrats and that is what makes you Republicans and what made your ancestors Whigs. We not only believe in a written constitution, but we believe in construing every line and letter of it strictly to serve its purpose. You believe in a broad construction of the Constitution as well as broad court review. I think you honestly believe it; or, at least, most of you do. You believe as honestly in that as I do in my theory, because you trust more to the wisdom and to the justice of the living than you do to the restraining enactments of the dead. Just as if I were writing a constitution I would write those provisions in it, so when I am writing a law under that Constitution, I desire that there shall be written in it such, but only such, jurisdiction to the courts as the Constitution commands us to give them.

Mr. FULTON. Mr. President, I think I have been a persistent, if not a consistent, advocate of what we have come to call the restricted or narrow review. I fully agree with the Senator from Texas [Mr. BAILEY] that there is a clear distinction between what we have called and what we mean by a restricted review and that which we term the broad review. I believe, and have contended throughout this discussion, that under the Constitution we can not deprive a carrier or a party affected by the orders of the Commission of the right to have every such order tested as to its constitutionality or as to whether the Commission had the power or authority under the grant of Congress to prescribe it. And I believe unless we specifically give the courts the power to go beyond that, that is the limit to which the courts can go or will go in any case.

There is, and has been a wide misapprehension as to the nature and extent of the controversy which has been going on here between the so-called "narrow" and the so-called "wide" review advocates. There seems to be an impression among some that one party has contended that there should be no court review whatever of the orders of the Commission. There has been no such contention, Mr. President. It has been conceded by all that the parties affected by the orders of the Commission have the right to have tested in court the question as to whether or not their constitutional rights have been invaded or the Commission has exceeded its authority. We have contended that the parties have this right whether it be so written in the statute or not; that it is not necessary to write any such authorization in the statute in order to vest such right in the parties affected by any order of the Commission.

But we contend further that if such authorization shall be inserted in the statute, it will not in the least extend the powers of the court to inquire into or to review the orders, unless the statute shall go further and provide that the courts may also review the discretion which is vested in the Commission to make the orders, and right there I contend is the boundary line between the restricted and the broad review. The question is whether or not we shall allow the parties affected by the orders of the court to have a judicial inquiry beyond the constitutional question into the question of the wisdom of the exercise by the Commission of its discretionary powers under the act of Congress. Clearly, such right never exists unless affirmatively and in terms granted by Congress, and neither by the original text nor as proposed to be amended is or will such right be granted.

Mr. President, these have been the issues. Now, the Senator from Iowa offers an amendment to the provision we have commonly called the "venue clause" in the pending bill. So far as that particular amendment is concerned, in view of the criticisms which have been offered against it, I think I ought to say that I acknowledge something of responsibility for its presentation here. I think I can safely say that I am the sole, lone, and exclusive author of the words "and jurisdiction to hear and determine such suits is hereby vested in such courts." I assume the responsibility for having suggested and written those words. I make no claim to having originated the thought or idea. The suggestion that some amendment of that character should be made has been advanced during the discussion of this bill by several. But as for the particular words here employed and their insertion as proposed, I admit and assume entire responsibility. I suggested them to the Senator from Iowa, and at his request put them in writing exactly as they here appear without suggestion from or consultation with any person whomsoever. Whatever of responsibility this admission entails, I willingly assume.

I undertake to say, Mr. President, and I think I can prove, that the addition of these words to this section do in no wise extend or enlarge the powers of the court to review the orders of the Commission. Let us take the language of the bill as it is without the proposed amendment:

The venue of suits brought in any of the circuit courts of the United States to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office.

That is the language of the bill as it stands to-day. I ask the Senate what does that language mean? "The venue of suits brought in any of the circuit courts of the United States to enjoin, set aside, or annul" the orders of the Commission shall be in certain circuit courts of the United States in certain districts. Does not that contemplate and imply that those courts shall have jurisdiction to try, "hear, and determine such cases?" It has been contended, of course, that the clause quoted would not vest in the courts jurisdiction in such cases. I have always contended that it would and that it is immaterial whether or not it would, because the courts would have the jurisdiction without an express provision granting it to inquire whether or not an order invades a party's constitutional rights. I ask Senators is it not a most illogical and absurd proposition to assert that the venue of a certain class of cases shall be in certain districts, in certain courts therein, and yet deny that those courts have jurisdiction to hear and determine them?

Mr. RAYNER. Let me ask the Senator—

Mr. FULTON. No; the Senator is already scheduled for the next amendment to complete his speech, and I think he ought not to appear in advance of the announcement. If the Senator will kindly pardon me, I must hurry along, because I have little time. I may also have to advertise dates for the future.

Mr. President, whatever may be the views of Senators as to whether or not this venue clause vests the jurisdiction in the courts mentioned, I assume that everyone will admit that it was intended to confer such jurisdiction, or, at least, to acknowledge it, because, as I have said, it would be the most absurd proposition imaginable to say to a party, "We realize that you have a right to maintain a certain action, you may maintain a suit to test the constitutionality of the orders of the Commission, but you must try the case in this particular court," and then when the party comes into that court to try the case deny the jurisdiction of the court to entertain the suit.

Then, Mr. President, if it be a fact that the granting or acknowledgment of jurisdiction was contemplated in this venue clause, tell me how much it adds, how much it enlarges, how much it extends the jurisdiction of the courts to simply add the words "and jurisdiction to hear and determine such suits is hereby vested in such courts."

Suppose this bill should be enacted without changing the venue clause or adding the proposed amendment. Would it be contended that it was the purpose of Congress to designate the courts in which any suit to test the validity of an order of the Commission should be brought and yet to deny to such courts jurisdiction to hear and determine such suits? What, think you, was the purpose of inserting this venue clause? Was it intended as a delusion and a snare?

Clearly the framers of this bill recognized the fact that suits might and would be instituted to test the validity of orders; that under the Constitution the right to prosecute such suits might not be denied, but that Congress might designate in what court they should be prosecuted, and it was deemed important so to do, hence this venue provision.

But, Mr. President, do the words "jurisdiction to hear and determine such suits is vested in such courts" in any wise

broaden the right of review? Let us see. What suits are referred to in the amendment? Manifestly the suits the venue of which is fixed in certain courts. No other or different character of suits are brought in by the amendment. Then, how can it be contended that an enlarged jurisdiction is thereby given? Simply jurisdiction to hear and determine such suits, namely, the suits the venue of which is provided for in the original text, is granted. Was it not designed that such courts should have jurisdiction to hear and determine such? If not, why stipulate the place of trial when there could be no trial?

Do the words "to hear and determine" enlarge the right of review? Clearly not, for they are words the legal import of which is well understood. "Jurisdiction to hear and determine" signifies only that the court is empowered to hear and determine the case according to the legal rights of the parties as they shall appear; they do not in any degree define the scope of the inquiry. It therefore clearly appears that this amendment adds nothing to the jurisdiction of the courts except to make it clear that there is no purpose to deny a party whatever right he may have under the Constitution to a judicial investigation to ascertain whether or not his constitutional rights have been invaded, or the authority of the Commission exceeded. How far, then, under such a provision will the courts go in reviewing the orders of the Commission? In answer to that I lay down this proposition:

Where Congress confides to an administrative board or commission such as this discretionary power, the courts will not review or inquire into its orders or proceedings in the exercise of such discretion further than to ascertain whether or not it has exceeded the power vested in it or, what is the same in effect, violated the constitutional rights of a party affected by any such order or proceeding, unless the statute specifically and in unquestionable terms authorizes it to review such discretion. Now, here you will observe no such authority is given or implied. The provision is that all suits "brought to enjoin, set aside, annul, or suspend an order of the Commission" shall be brought in certain courts, which shall have jurisdiction to hear and determine them. That is simply a recognition of the admitted fact that the right to bring such suits can not be denied, for, as I have said and as has been said by every Senator who has participated in this discussion, the right to a judicial inquiry to ascertain whether or not a party's rights under the Constitution have been invaded, or the authority of the Commission exceeded, can not be denied, hence it is here recognized. True, it is not specifically provided that the inquiry shall cease when that fact has been determined, but such is the rule, unless specific authority for further inquiry be given.

Now, on that proposition I wish to call the attention of the Senate, just briefly without reading in extenso, to the case of the San Diego Land Company v. National City, in 174 U. S. The court there is discussing how far judicial review of rates fixed by a commission just such as this may be had without express and specific authority. This is what the court said, Mr. Justice Harlan announcing the decision:

But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable—

Now, notice—

unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public—that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.

Mr. President, that is the limit to which the court will go unless there is some specific authority found in the statute for doing otherwise; and it is reasonable, logical, and just, because Congress in the exercise of its legislative authority has vested in the Commission discretionary power, and the courts never review the exercise of discretionary power unless there is a specific provision for it or unless abuse of it can be shown.

Mr. BACON. Will the Senator permit me to ask him a question?

The VICE-PRESIDENT. Does the Senator from Oregon yield to the Senator from Georgia?

Mr. FULTON. It is hard to refuse the Senator. I have refused others.

Mr. BACON. I simply wanted to ask the Senator, referring to the proposed amendment which he is now discussing, whether under the terms of the proposed amendment there is any order or requirement which it is possible for the Commission to make which this amendment does not give specific jurisdiction both to hear and to determine?

Mr. FULTON. No, in one sense; yes, in another. I will answer the Senator this way: There is no suit that may be

filed attacking the validity of the orders of the Commission on the ground that they are unconstitutional of which those courts will not take jurisdiction, but the court will take jurisdiction simply for the purpose of protecting the constitutional rights of the parties. The courts will inquire whether or not constitutional rights have been invaded, and if they find that they have not they will drop the suit then and there and dismiss it.

Mr. BACON. If that is the case, what possible objection can the Senator have to the amendment offered by the Senator from Maryland, which prescribes that very thing?

Mr. FULTON. That is a very natural question. While we understand in a general and in a sufficiently definite way to what extent the court will go in cases of this character where no specific provision for reviewing the discretion of the Commission is given, yet the Senator knows very well, because he is an able lawyer, that when we enter upon the work of prescribing the limits of the jurisdiction of the court to exercise its judicial power we are treading on very dangerous ground. It is the wiser course to let the court determine the extent of its power in that respect. How far they will go we know with sufficient certainty to be assured that under this provision they will not review the Commission's discretion.

The VICE-PRESIDENT. The Senator's time has expired.

Mr. CULLOM. Mr. President, I have retained my seat in the Senate while I have been in the city during the whole discussion of this subject. I have felt that perhaps I ought to continue to do so, but in view of my past relation to the subject and the expectation that I should say something upon it I have concluded to make a very few remarks.

Mr. President, I am in favor of the adoption of the amendments offered by the Senator from Iowa [Mr. ALLISON].

When the Hepburn bill unanimously passed the House, and was referred to the Committee on Interstate Commerce of the Senate, ill health necessitated my absence from Washington. I did not have the opportunity or facilities to examine the legal phase of the subject. Without special investigation, I supposed, as a matter of course, that the railroads would have the right under that bill, without amendment, to appeal to the courts if the rates prescribed by the Commission invaded any right guaranteed to them by the Constitution. The agitation for an amendment to the interstate-commerce act of 1887 has been going on for nearly ten years, until the patience of the people of the whole country has become nearly exhausted, and my main anxiety was to secure the passage of an effective bill at the earliest possible date.

The Hepburn bill having unanimously passed the House, and seeming to embody the more important features deemed essential to an effective act, I favored the passage of that bill without amendment.

The general provision in that bill that the orders of the Commission shall remain in effect until set aside by the Commission itself, or by a court of competent jurisdiction, taken in connection with the judicial power as defined by the Constitution and laws of the United States, extending as it does to all cases in law and equity arising under the Constitution and laws of the United States, and the general right of every man to appeal to the court if his constitutional rights are invaded, appeared then to me to be sufficient to confer upon the circuit court jurisdiction to protect the rights of the carrier under the Constitution, without any specific provision conferring such jurisdiction upon the circuit courts.

But as this great debate has developed the subject, and I have examined the decisions of the courts, I think it extremely doubtful if the circuit courts of the United States can take jurisdiction without such jurisdiction is expressly conferred upon them.

The decisions of the Supreme Court since the days of Chief Justice Marshall and extending to the present, many of which have already been quoted here, seem to make it reasonably clear that the circuit courts of the United States, having been created by statute, can have no jurisdiction but such as the statute confers. And, as stated by the court itself, the circuit courts of the United States are created by act of Congress, and it is necessary in every attempt to define their power to look to that source as a means of accomplishing that end.

The decisions of the Supreme Court have convinced me that it would be unsafe, to say the least, to pass this bill without inserting therein a clause expressly conferring jurisdiction upon the circuit courts of the United States.

Mr. President, if we could constitutionally do so, I would not hesitate to confer upon the Interstate Commerce Commission the absolute, unreviewable power to fix rates.

I believe that the Interstate Commerce Commission is a much more competent body to fix a railroad rate than is a court of the United States.

Deriving their appointment from the same source, they should be as able and as competent as the circuit judges of the United States. In addition, the Commission gives its whole time and attention to the consideration of all the details connected with the fixing of rates and the management of railroad property. Without at all reflecting upon our United States courts, the Interstate Commerce Commissioners necessarily become far more expert in this branch of the subject than any circuit court can possibly become.

Judge Grosscup, an able circuit judge of the United States, has recently said that one of the difficulties in the administration of the law is that the circuit judges are totally incompetent to pass upon the question of rates. Judge Grosscup made this statement, not as a reflection on the learning and ability of circuit judges, but because of the intricacy of the question and the vast amount of other important work which is the daily life of the circuit judge. As he expressed it—

The circuit judge one day is exploring the intricacies of a patent case, another day he is hearing a personal-injury case, another he is hearing some customs case, another he is pursuing the meanderings of some chancery case. Every day brings up some new subject covering some wide area upon which he must be specially educated for the day's judgment. * * * Now, call him from this judgment seat to decide upon a question, the most perplexing, the most difficult question to a man who has had no education, no vision of the subject upon which he is expected to rule. Thus I say that the circuit court is an incompetent court.

Mr. President, I was no less forcibly impressed with the reasoning of Mr. Justice Bradley, than whom no abler man has occupied a seat in the Supreme Court, in his dissent in the Minnesota case.

He said:

It is complained that the decisions of the board are final and without appeal. So are the decisions of the court in matters within their jurisdiction. There must be a final tribunal somewhere for deciding every question in the world. Injustice takes place in every tribunal. All human institutions are imperfect—courts as well as commissions and legislatures. Whatever tribunal has jurisdiction, its decisions are final and conclusive, unless appeal is given therefrom. The important question always is, What is the lawful tribunal for a particular case? In my judgment in the present case the proper tribunal was the legislature or the board of commissioners which it created for the purpose.

It will thus be seen from the reading of the decision of Mr. Justice Bradley that he did not manifest the distrust of the Commission as a competent body upon which to be conferred the absolute power to fix rates, which we so frequently hear both in and out of Congress.

But I understand very well, Mr. President, under the decision of the Minnesota case, that neither Congress nor the legislature can confer this power upon a commission to fix a rate which shall be final and not subject to review by the courts.

Mr. President, I am not in favor of a general or broad right of review by the courts, and neither do I think that that portion of the pending amendment conferring jurisdiction upon the circuit court confers a broad right review. It does not do it in terms, and, in my judgment, it will not be so construed by the courts. If this bill shall become a law, I do not want it to be shorn of much of its usefulness by judicial construction, as was the act of 1887.

The court should not be permitted to go into the whole question of the reasonableness of the rate fixed by the Commission, because the fixing of the rate is a legislative function, and the Commission is a much more competent body to fix a rate than is any court of the United States.

The proper province of the court is to determine whether the Commission exceeded its authority, and whether the rate fixed by it contravenes the right of the carrier guaranteed by the fifth amendment to the Constitution, that property shall not be taken without due process of law, nor without just compensation.

Mr. President, there is a great difference between the jurisdiction of the court over a rate fixed by the railroad itself and a rate fixed by Congress or the Commission.

In a controversy between a shipper and a railroad the courts very properly go into the whole question of the reasonableness of such rate. But in a controversy over a rate fixed by a commission the proper function of the court is to inquire whether the rate is so unreasonably low as to amount to confiscation under the fifth amendment.

This is true, because when Congress delegates to the Commission the fixing of a rate and the Commission fixes the rate it is practically the same as if the rate were prescribed by Congress itself. It is practically a rate fixed by law, and all that the court can properly pass upon is whether the law-made rate violates any constitutional right of the carrier.

This, in my judgment, is the extent to which the court would review the rate. This is especially true where jurisdiction is merely given in general terms, as in this amendment, to hear

and determine the controversy without expressly providing that the court shall pass upon the reasonableness of the rate.

Mr. President, I do not see that there is anything inconsistent on the part of Senators who favored the adoption of the Hepburn bill without amendment in favoring the pending amendment conferring jurisdiction on the circuit court.

When I favored the passage of the Hepburn bill without amendment I knew that the carrier could not be denied the right of appeal to the courts, and I thought that the Hepburn bill as it passed the House contained sufficient provision on that subject.

The adoption of the jurisdiction portion of the pending amendment will not confer upon the courts any greater jurisdiction than the friends of the Hepburn bill thought it contained when it passed the House. I consider it merely declaratory of something which we thought was already contained in the bill.

If the Hepburn bill as it passed the House contains sufficient provision for review by the courts, this amendment providing "jurisdiction to hear and determine such suits is hereby vested in such courts" will not broaden the scope of the review. Whatever the courts could have constitutionally done under the terms of the bill as it passed the House they can constitutionally do under this amendment, and no more.

On the other hand, if the bill as it passed the House does not contain sufficient provision for review, and is therefore unconstitutional, this amendment will render the bill constitutional.

The amendment does not confer in terms a broad right of review. It does not define to what extent the rate fixed by the Commission can be reviewed by the court. In the absence of such provision, I believe that the courts will hold that they will not interfere with a rate fixed by the Commission unless the Commission exceeded its authority or unless the rate fixed amounts to confiscation under the fifth amendment.

Mr. President, I do not think there is any danger of the courts exercising any greater power of review than to determine whether the rate fixed by the Commission is in violation of the constitutional rights of the carrier.

As the subject has been so thoroughly developed here, and the general provisions of the bill, especially the provision that the Commission shall prescribe a rate which, in its judgment, is reasonable and just, the manifest intent on the part of Congress that the court shall not unduly interfere with the rate fixed by the Commission, to my mind, make it certain, even though the courts have the power, they will be loath to overturn a rate fixed by the Commission unless it is so manifestly unjust as to amount to the taking of property without just compensation.

In passing upon rates fixed by the Commission, under the fifth amendment, the courts have considerable latitude, and all the latitude which they should be given.

It is said that under the fifth amendment the rate fixed by the Commission must amount to "confiscation" before the court can set it aside. In a legal sense this is perhaps true, but the term "confiscation" has always seemed to me misleading when used in this connection.

The term "confiscation" conveys to the ordinary mind the taking of property without any compensation. If that were held to be its meaning, the courts would have a very narrow jurisdiction. But under the fifth amendment the railroad is entitled to a just compensation for the services performed, and that just compensation has been defined to be a fair return upon the reasonable value of the property at the time it is being used for the public. (Kansas City Stock Yards case, 183 U. S., 90.)

So, Mr. President, it will be seen that the courts will have a reasonably wide latitude in passing upon the rate fixed by the Commission.

Mr. President, this is the essential feature of the pending amendment, but it contains other excellent provisions. I am referring now to the amendment offered by me on behalf of the Senator from Iowa [Mr. ALLISON].

I have always been much in favor of striking out the words "and fairly remunerative." In my judgment they should never have been inserted in the original bill.

The rate to be fixed by the Commission should be a "just and reasonable" rate, because the meaning of those terms is well understood and has been passed upon many times by the courts. The addition of the words "and fairly remunerative" might bring a new element of consideration into the fixing of the rate. A just and reasonable rate would probably be a fairly remunerative rate, and vice versa. To say the least, the words are surplusage and should be stricken from the bill, if they have not already been.

The pending amendment also contains a provision leaving it within the discretion of the Commission, within a limit of two

years, as to the time when the rate shall continue in effect. This will give the necessary elasticity, so that rates may be readily changed, if found necessary.

The limitation on the granting of preliminary injunctions is also a very wise provision. It is in a sense a compromise between a prohibition against granting of preliminary injunctions and leaving the court absolutely free to grant such injunctions. Under this provision the Commission will have ample time to appear and resist the granting of an injunction.

With these amendments adopted I think the pending bill will be not only constitutional, but will prove very effective legislation.

Mr. BACON. Mr. President, I do not design speaking over four or five minutes at the outside. I do, however, want to ask the attention of Senators, according to all of us the common desire to accomplish the best in this regard, while I present this question in just a few words and without elaboration.

There is no question, I presume, in the minds of lawyers that in the absence of any distinct conferring of jurisdiction by this act, the United States courts would have all power to review any decision which affected the constitutional rights of the parties; in other words, nothing that we can incorporate in this bill can take that away from the citizen, because a law, which is superior to us, guarantees to him those rights and has conferred upon the courts the power and the duty to maintain those rights for the citizen. But there is a domain outside of that—outside of the rights specifically protected by the Constitution—in which it is within the power of Congress to confer or to withhold jurisdiction from the courts.

The point I wish to ask the attention of Senators to for their candid, unbiased, and unprejudiced judgment is this: Under the terms of this proposed amendment, if we adopt it—I am speaking now of the amendment offered by the Senator from Iowa [Mr. ALLISON]—under the letter of it, under the words of it—is there one single order or requirement of the Commission which, so far as we can confer it—the jurisdiction—we do not confer in this proposed amendment? If it is adopted, we confer upon the court the power not only to hear, but to determine every question which can arise as to any order or requirement of the Commission. Let me read the language as found on page 317 of this print of the amendments. I asked the Senator from Oregon [Mr. FULTON] the question as to this, and I was not entirely content with his reply, because I did not think it was definite and candid. Of course I know he intended to be candid, but his reply did not cover the question. If I may have the attention of Senators for two or three minutes, I desire to say that the language of that amendment, omitting words unnecessary for this discussion, is this:

The venue of suits * * * to enjoin, set aside, annul, or suspend any order or requirement shall be, etc., and jurisdiction to hear and determine such suits is hereby vested in such courts.

Paraphrasing the language, it would read in this way:

Jurisdiction to hear and determine any order or requirement of the Commission is hereby vested in such courts.

That is what the language means; that is what it is when paraphrased.

Those Senators who are in favor of conferring on the courts jurisdiction to review every order and every requirement of course can consistently support that amendment; but as to Senators who have stood here for months and asserted, both in public and in private, that they are not willing that the courts shall have the jurisdiction and the power to hear and determine questions outside of the constitutional questions, how can such Senators now defend themselves on the ground of consistency? They can only do so by adopting the position taken by the Senator from Oregon [Mr. FULTON], in which he says that, while this language does confer this power upon the courts, the courts will not exercise it. That is practically what the Senator from Oregon said.

Mr. FULTON. Will the Senator allow me?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Oregon?

Mr. BACON. I do.

Mr. FULTON. I simply desire to interrupt the Senator to make a correction, for he certainly does not intend to misrepresent what I said.

Mr. BACON. The Senator knows I do not.

Mr. FULTON. I did not, with all deference to the Senator, say that we granted the power to the court, but that the court would not exercise it. I said if we granted to the court the power to hear and determine suits that should be brought to test the validity of an order of the Commission, without granting specific authority to go beyond the constitutional inquiry, which we do not grant, the courts will not go into an inquiry as to whether or not the Commission has wisely exercised its discretion, but will simply inquire whether or not the constitu-

tional rights of the party has been invaded, and if not, will dismiss the suit.

Mr. BACON. I ask the Senator, if that was his position, why it was he was opposed to the amendment of the Senator from Maryland [Mr. RAYNER] which proposes to confer that power upon the courts?

But, Mr. President, what the Senator says—and I do not desire now to enter into a colloquy with him on the subject, because my time is so limited, and I promised not to occupy as much time as I have already done—but the Senator said that the court in taking jurisdiction is not going to be governed by the language of this law, but by what they conceive to be their duty outside of the law and outside of the expressed jurisdiction which we by this language confer.

Now, I ask the Senator in his reply to indicate a single order or a single requirement of the Commission which this proposed amendment, if it is ingrafted upon this law, will not give to the circuit court of the United States jurisdiction both to hear and to determine?

Mr. CARTER. Mr. President—

Mr. BACON. If the Senator will pardon me, I shall be glad to have him answer the question in his own time.

Mr. CARTER. The Senator propounded a question.

Mr. BACON. I know, but I said I hoped any Senator who would answer it would reply in his own time. If the Senate will give me extra time I will be glad to hear the Senator.

Mr. CARTER. I have no time to give.

Mr. BACON. The Senator has his time. He has not spoken on this amendment and will have fifteen minutes in which to do it.

I want to call attention now to another matter to see if the defense, if I may so term it, of this amendment is well founded when it is claimed that the amendment does not enlarge the jurisdiction which is contained in the original Hepburn bill. The original Hepburn bill read in this way:

The venue of suits brought in any of the circuit courts of the United States to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office.

It is contended that that gives jurisdiction to the courts, not simply to hear a complaint, but upon such hearing to enjoin, set aside, annul, or suspend any order or requirement, and that these additional words contained in the proposed amendment which specifically confer that jurisdiction "to hear and determine" do not enlarge the power which the original Hepburn bill conferred upon them.

Why, Mr. President, what do these words in the original bill mean when they say:

The venue of suits brought in any of the circuit courts of the United States to enjoin, set aside, annul, or suspend any order or requirement of the Commission?

They simply mean that whenever any person shall claim the right to have such an injunction on account of any order or any requirement of the Commission, the venue to hear that contention, the place and the court where and by which that contention shall be heard, shall be the place and the court specified in this bill. But it is incredible that any lawyer will upon careful consideration claim that that language in the original House bill confers the jurisdiction not only "to hear," but "to determine" every complaint as to any order or requirement of the Commission, and to enjoin or set aside any such order or requirement. It is an impossibility. It simply designates the venue in which, when any person makes application to enjoin any order or requirement of the Commission, the court shall have jurisdiction to hear and determine whether that is a legitimate matter for it to take into consideration. It is the territorial jurisdiction I speak of when I use the word "jurisdiction;" but not the legal jurisdiction. It is the venue and venue only—not the jurisdiction to hear and determine. A court may have territorial jurisdiction and still not have legal jurisdiction of the subject-matter; and that is the entire scope of it.

Mr. President, the learned lawyers who added these words were not indifferent to that view of the matter, and the learned lawyers who for months have been considering this question were not indifferent to the proposition that it was necessary, not simply to designate the court which should have the territorial jurisdiction, which should have the venue within which parties aggrieved might ask the aid of the courts, but such fixing of the venue does not confer jurisdictional powers upon the courts as to the subjects-matter. With the venue thus alone fixed the courts would only have such jurisdictional power over the subject-matter as they would have independently of this particular act. The astute lawyers who framed this proposed amendment well knew this. And therefore to secure what they call the "broad review"—the review to secure which this debate has been protracted for three months—they well knew it was

necessary to go further and to say that the particular things for the hearing of which the venue had previously been fixed should constitute matter over which the court, thus having the territorial jurisdiction or the venue, should also have the legal jurisdiction to hear and determine. Everybody inside and outside of this Chamber knows that those who have been contending for the broad review, the unlimited review, have condemned in unmeasured terms this provision of the House bill on the ground that the review which it authorized was not broad enough to protect the rights of the railroads; and now forsooth those who stood with us have surrendered, and now applaud this unlimited amendment on the ground that it means exactly what the original provision in the House bill means.

Mr. President, what have we been talking about here for three months if it be true that this means the same thing as the provision in the House bill and does not enlarge the jurisdiction?

Mr. ALLISON. Will the Senator yield to me for a question? The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Iowa?

Mr. BACON. I would never decline an interruption by the Senator.

Mr. ALLISON. Suppose the situation is such that this administrative Commission, exercising power under this bill, if it shall become a law, makes an order respecting a rate, and some carrier or somebody else brings a suit against the Commission, will the courts say that they will examine those questions where discretion has actually and properly been given by law to the Commission, no property right being involved?

Mr. BACON. If the court does not do it, it would be because the court would say that Congress had no right to pass this bill and adopt this amendment, for this amendment does not restrict it in any way.

Mr. ALLISON. Very well. The court simply will not examine into that question; otherwise this administrative board is annihilated.

Mr. BACON. Mr. President, the language of this proposed amendment makes no restriction whatever. It is absolutely broad, absolutely limitless, and the Senator only takes refuge behind the proposition that the court will not exercise the jurisdiction which this amendment confers upon it, or proposes to do.

Mr. ALLISON. I take no shelter, but I want to ask the Senator, if it turns out that in this order no judicial question is involved, will the mere suggestion of jurisdiction give the court jurisdiction?

Mr. BACON. Mr. President, if time permitted, I could go into the proposition as to how far we can confer jurisdiction upon the court which it would not have in the absence of that distinct conferring of power. There is no doubt about the fact that when we prescribe a certain duty for the Commission, whether in its discretion or otherwise, if it is made a legal duty, we can confer upon the court the jurisdiction to hear and determine whether they have violated the law in that regard, and, in the absence of the distinct conferring of it, they would not have the power so to do. But it would be manifestly difficult for me to develop that line of argument without going into it at length and producing authorities. I will say to the Senator, however, that if he will read the dissenting opinion of Mr. Justice Bradley in the Minneapolis case, he will find that Justice Bradley based his dissenting opinion upon that proposition. While it is a dissenting opinion, the principle involved is not the point upon which the court decided. The majority of the judges—all but three of them who dissented—speaking for the court, put their decision upon an entirely different ground, not in conflict with that particular contention on the part of Judge Bradley; in other words, not in conflict with that legal proposition thus announced by him. They differed, as I understand, in the application.

The VICE-PRESIDENT. The Senator's time has expired.

Mr. MORGAN. Mr. President, I have heard all the lawyers in the Senate speak on this subject and several who are not lawyers, and I have read a good many law books in my life and heard a good deal of discussion about the doctrine of common carriers, their liabilities and their obligations, but I never have found any lawyer in this body, or any Senator in this body, or any judge who has ever written on this subject, who takes any exception to the language of this bill on page 3, from line 14 to 19.

The framers of this Hepburn bill in the House put a rudder or a helm on the ship that nobody has disputed as the authority over the whole subject. I will read it:

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unrea-

sonable charge for such service or any part thereof is prohibited and declared to be unlawful.

An unreasonable and an unjust charge is prohibited and declared to be unlawful by this bill. I have contented myself with that provision of the bill, being perfectly satisfied that Congress has no right to violate it in fixing an exorbitant rate, or a rate that is too low, and that no commission Congress could create could violate that provision by fixing rates that were too high or rates that were too low. But there has to be a tribunal to determine this question of reasonableness or unreasonableness. What tribunal is that under our Constitution? The judicial tribunal. Congress can not enact an arbitrary rate, even under the provisions of this bill, which it can force upon a man against his will, so long as he has the right of appeal to a court to get rid of it; neither can Congress authorize a commission to put either upon the shipper or the carrier an unreasonable rate.

The Senator from Iowa, in his splendid statement of this question, never got to the top of his subject until he finally admitted that all the rates that were to be imposed under this act or any other act that Congress can possibly enact must be just and reasonable.

So we have all met on that ground. We have been together on that ground all the time and have had no differences between ourselves on that ground; and I rested perfectly quiet during this magnificent and tremendous debate about the way of managing the courts so that they might be possibly able to make the rates just and reasonable, or, on the other hand, might possibly be able to make them unjust and unreasonable by a limitation of their authority.

That being so, Mr. President, where do the words "just and reasonable" come from in connection with the obligation of common carriers? Where do we get them from? They do not come out of any statute. They are coeval with the birth of civil jurisprudence. Who invented them and put them forward? The courts. It is a rule of court that all nations and all civilized people of Christendom respect—and nowhere more thoroughly respected than in the last clause of the first section of this bill. It is a perfectly simple proposition that if Congress makes a rate by its own legislative act which is unjust and unreasonable this bill condemns it. It is not within the purview of the powers of Congress under this law to provide for an unjust and unreasonable rate. Suppose Congress taxes an article four times its value in favor of the carrier for transportation; of course this bill would condemn that. What would be the remedy? To go into a court and get rid of it; not to come back to Congress and ask it to pass a different law. All acts of Congress under this great judicial decree, that has been a part of the civil jurisprudence of all Christendom since the courts first undertook to regulate this subject, is amenable and liable to its constraint. You can not get rid of it if you want to do it.

That solves, in my judgment, the whole question that we have been so long debating and so anxiously worrying about here in regard to the jurisdiction of the courts. You can not keep out of the courts a man against whom Congress or a commission assesses an unreasonable rate or a railroad against whom it assesses a rate that is too low. The courts will open their doors to them under this great civic enunciation that has lasted since the dawn of civilization. They will go there and get their relief in spite of all that we can do.

The courts have the final decision of this. Some way will be found to go there. You may destroy all the remedies now known, and the courts themselves, after the fashion of the old common-law courts, will invent remedies in order to get hold of this subject. So I do not really see that there is much in this bill to be discussed, except in regard to the method of handling the subject.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Maryland [Mr. RAYNER].

Mr. RAYNER. On that I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. SPOONER (when his name was called). I again announce my pair with the Senator from Tennessee [Mr. CARMACK]. If he were present, I should vote "nay."

The roll call having been concluded, the result was announced—yeas 24, nays 55, as follows:

YEAS—24.

Bacon	Culberson	Latimer	Overman
Bailey	Daniel	McCreary	Rayner
Berry	Dubois	McLaurin	Simmons
Blackburn	Frazier	Martin	Stone
Clarke, Ark.	Gearin	Money	Taliaferro
Clay	La Follette	Newlands	Tillman

NAYS—55.

Aldrich	Clark, Wyo.	Gamble	Nelson
Alger	Crane	Hale	Nixon
Allee	Cullom	Hansbrough	Penrose
Allison	Dick	Hemenway	Perkins
Ankeny	Dillingham	Hopkins	Pettus
Beveridge	Dolliver	Kean	Piles
Brandegee	Dryden	Kittredge	Platt
Bulkeley	Elkins	Knox	Scott
Burkett	Flint	Lodge	Smoot
Burnham	Foraker	Long	Sutherland
Burrows	Foster	McCumber	Warner
Carter	Frye	McEnery	Warren
Clapp	Fulton	Millard	Wetmore
Clark, Mont.	Gallinger	Morgan	

NOT VOTING—10.

Burton	Gorman	Patterson	Teller
Carmack	Heyburn	Proctor	
Depew	Mallory	Spooner	

So Mr. WARREN's amendment was rejected.

Mr. WARREN. Mr. President, I wish to make a request for unanimous consent. I shall leave the Chamber in less than an hour, and must be absent during the further consideration of the pending measure.

A few days ago I offered an amendment of less than three lines to the Culberson substitute, which was adopted in place of the Foraker amendment, with respect to passes. I should like to have permission now to offer an amendment to the substitute as it exists in the present bill. I think there is no objection to my amendment, which simply provides that owners or persons in charge of live stock may be carried free by the railroads when traveling with stock or when going to place of shipment or returning from place of delivery, and I should be glad to have it incorporated now in the amendment as it stands.

Mr. BEVERIDGE. There is an amendment to the substitute already pending.

Mr. WARREN. There is no amendment pending to it.

Mr. BEVERIDGE. I make no objection, but I do not see how the Senator is going to get around the parliamentary situation.

Mr. WARREN. I ask unanimous consent, which of course gets around it.

Mr. BEVERIDGE. Ah, yes! Let us hear the amendment.

Mr. CULBERSON. I do not know what the temper of the Senate is as to the matter, but I suggest to the Senator from Wyoming that possibly the Senate would now take up the motion to reconsider and adopt it or reject it.

Mr. ALDRICH. I hope we will go on to discuss the next section.

Mr. CULBERSON. Very well.

Mr. ALDRICH. Let the next section be read.

Mr. KEAN. Let the amendment be read.

The VICE-PRESIDENT. Is there objection to the request for unanimous consent?

Mr. BEVERIDGE. Let the amendment be read first.

The SECRETARY. After the words "charitable institutions" it is proposed to insert:

Or to owners and care takers of live stock when traveling with such stock or when going to point of shipment or returning from point of delivery.

The VICE-PRESIDENT. Is there objection to the request for unanimous consent?

Mr. BACON. The Senator merely wants to offer it now?

Mr. WARREN. No. I hope it will be adopted.

Mr. BACON. I beg pardon.

Mr. WARREN. For the reason that if a substitute is adopted and this amendment is not now included in the legislation which follows we might not remember to take care of this particular matter.

Mr. CARTER. I will say to the Senator from Wyoming that I have an amendment of the same kind which I intend to offer, and if agreeable I will offer his amendment instead of the one I have prepared.

Mr. WARREN. It is not a matter of any personal concern. If I can be assured that it will be offered in the form in which I now offer it, I will withdraw my request for unanimous consent.

The VICE-PRESIDENT. The Senator from Wyoming withdraws his request for unanimous consent. Are there further amendments to section 4?

Mr. LA FOLLETTE. I have an amendment which I desire to offer.

The VICE-PRESIDENT. The Senator from Wisconsin proposes an amendment, which will be stated.

The SECRETARY. On page 12, after line 14, at the end of the section, add the following:

If upon the trial of any action brought to set aside or modify any order made by the Commission under this section evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall

transmit a copy of such evidence to the Commission, and shall stay further proceedings in such action for fifteen days from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same, and may alter, modify, amend, or rescind its order relating to such rate or rates, fares, charges, classification, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the Commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

Mr. LA FOLLETTE. Mr. President, I have offered this amendment, as I have offered others, because I believe it will perfect and strengthen the bill. The Commission has been reversed in thirty-two cases. In twenty-six of those cases, as the record discloses, it has been reversed because testimony was offered upon the trial before the court which was not offered when the case was presented to the Commission. The amendment proposes that if new testimony is offered when the case is on trial by the court, the testimony shall be taken, further action suspended thereon, and the record containing all of the testimony referred to the Commission for its consideration. This would give the Commission the benefit of all the evidence upon which to base its order. If the original order were set aside or modified, the railroad company would then have its opportunity to take the opinion of the court upon the action of the Commission, and the court would have before it the same testimony which the Commission passed upon. This amendment, if adopted, will take away from the railroad companies all inducement to withhold testimony when the Commission tries the case, because they will not be able to reverse the Commission by trying a different case before the court than the case tried before the Commission. There would be small likelihood that the court would disagree with the Commission. There would be less inducement to carry the case to the court and we should hear much less criticism of the Commission.

It would mean certainly a saving of time and a saving of great expense. In many cases which have been appealed from the Commission, where additional testimony was taken before the court, the writing up of the record containing the additional testimony has been a matter of very great expense to the Government. In one case, I remember, the expense was something over \$10,000. That case, of course, went on from the circuit court to the Supreme Court, and the Commission was reversed. Had that case been sent back to the Commission, probably it would have been the end of the entire proceeding. If there is any objection to this amendment, I should be glad to hear somebody state it.

Mr. HALE. Question!

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Wisconsin.

Mr. LA FOLLETTE. On that I ask for the yeas and nays.

Mr. GALLINGER. Mr. President, speaking to the amendment submitted by the Senator from Wisconsin, I wish to call attention to the fact that a little time ago I offered an amendment relating to differentials, which I temporarily withdrew. I offered the amendment for the reason that some days ago the Senator in charge of this bill declared that, in his judgment, a flat mileage rate was the proper thing to be enforced, and if I remember correctly the Senator from Texas coincided in that view. It was rather alarming that such a thing could happen, because it would bring such disaster to this country as it is almost inconceivable to think of. It was with a view of preventing that possibility that I offered the amendment. I knew that it was not drawn in the best form, and I hoped that some Senator would offer a substitute which would cover the ground.

But since I withdrew the amendment I have consulted with Senators, and I am satisfied it is, perhaps, an impossible thing to draw an amendment such as ought to be offered covering that point. I have therefore determined, Mr. President, not to offer the amendment again, but before concluding I should like very much indeed to have the junior Senator from Iowa [Mr. DOLLIVER], who has given great thought to this matter and with whom I have talked on the subject, state to the Senate what his view is as to the power the Interstate Commerce Commission would have over the matter that I attempted to correct. Does the Senator feel that the Interstate Commerce Commission would have power to make a mileage rate, or are their powers largely and perhaps wholly based upon the proposition that they can correct excessive rates?

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from New Hampshire yield to the Senator from Iowa?

Mr. GALLINGER. I do, for the purpose of making a statement.

Mr. DOLLIVER. Mr. President, the theory of the bill is that the Commission shall entertain complaints made before it alleging violations of the interstate-commerce law. The interstate-commerce law has in it four sections which contain its prohibitions. The complaints are to be directed against the railway or the line of railway which is violating the interstate-commerce law. Therefore I feel entirely free to say to the Senator from New Hampshire that the jurisdiction of the Commission is to require the railroad to cease and desist from its violation of the law and to conform its rates to the rates which in their judgment are lawful. I think no fear need be indulged that the Commission would go to the extreme of establishing a mileage system of rates in the United States. I certainly would regret it if that should be done, because the whole fabric of our market place would be disturbed by any such general change in the framework of our transportation system.

Mr. FORAKER. Will the Senator from Iowa allow me to ask him a question?

Mr. DOLLIVER. Certainly.

Mr. FORAKER. Is it not true that in all the cases in which the Commission undertook to fix rates, prior to 1897, when the Maximum Rate case was decided, it did virtually fix them upon an approximate mileage basis?

Mr. DOLLIVER. I think that can not be properly said.

Mr. FORAKER. It certainly did in the Maximum Rate case fix what was approximately a mileage basis.

Mr. DOLLIVER. The theory of the Commission in the Maximum Rate case was simply to reduce rates from Cincinnati to points in the Southeast to what the Commission found to be reasonable and just. I am sure it may be said of that case that they did not establish any system of mileage rates, but they did proclaim a system of equitable rates, of course counting distance as one of the elements that enters into the making of a just and reasonable rate.

Mr. FORAKER. That is all I contend for. Of course in the order it did not so appear, but in the opinion the Commission announced that was taken as the basis of their reasoning.

Mr. GALLINGER. Mr. President, I never attempt to accomplish the impossible, and after having consulted with some of the most eminent lawyers in the Senate, who gave it to me as their opinion that an amendment covering this point could not be drawn which would be satisfactory, and upon the statement made by the Senator from Iowa, who has given this matter very great thought, I am quite content to let the matter rest, and I will not reoffer the amendment I withdrew a little while ago.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Wisconsin [Mr. LA FOLLETTE], on which the Senator from Wisconsin demands the yeas and nays.

The yeas and nays were ordered.

Mr. STONE. Several Senators here would like to have the amendment read.

The VICE-PRESIDENT. The Senator from Missouri suggests that the amendment be again read. It will be read.

The SECRETARY. On page 12, after line 14, at the end of the section, add the following:

If upon the trial of any action brought to set aside or modify any order made by the Commission under this section evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto, the court before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in such action for fifteen days from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same, and may alter, modify, amend, or rescind its order relating to such rate or rates, fares, charges, classification, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the Commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

The VICE-PRESIDENT. The Secretary will call the roll on agreeing to the amendment proposed by the Senator from Wisconsin [Mr. LA FOLLETTE].

The question having been taken by yeas and nays, the result was announced—yeas 26, nays 49, as follows:

YEAS—26.

Bacon	Culberson	Latimer	Rayner
Bailey	Daniel	McCreary	Simmons
Berry	Dubois	McLaurin	Talliaferro
Blackburn	Foster	Martin	Teller
Clark, Mont.	Frazier	Money	Tillman
Clarke, Ark.	Gearin	Newlands	
Clay	La Follette	Overman	

NAYS—49.

Aldrich	Dick	Kean	Pettus
Alger	Dillingham	Kittredge	Piles
Allee	Dolliver	Knox	Platt
Ankeny	Dryden	Lodge	Scott
Brandegee	Flint	Long	Smoot
Bulkeley	Foraker	McCumber	Stone
Burkett	Fulton	McEnery	Sutherland
Burnham	Gallinger	Millard	Warner
Burrows	Gamble	Morgan	Warren
Carter	Hale	Nelson	Wetmore
Clark, Wyo.	Hansbrough	Nixon	
Crane	Hemenway	Penrose	
Cullom	Hopkins	Perkins	

NOT VOTING—14.

Allison	Clapp	Gorman	Proctor
Beveridge	Depew	Heyburn	Spooner
Burton	Elkins	Mallory	
Carmack	Frye	Patterson	

So Mr. LA FOLLETTE's amendment was rejected.

Mr. ALDRICH. I ask that the fifth section be now read.

Mr. TILLMAN. I move that when the Senate adjourns today it adjourn to meet at 11 o'clock to-morrow.

The motion was agreed to.

The VICE-PRESIDENT. The Secretary will read the next section.

Mr. LA FOLLETTE. I desire to offer, before we pass to the other section, the following, which I send to the desk.

The VICE-PRESIDENT. The Senator from Wisconsin proposes an amendment, which will be read.

The SECRETARY. It is proposed to add, at the end of section 4—

Mr. LA FOLLETTE. Not at the end of section 4, but as a substitute for section 4, or section 15 of the act of 1889.

The VICE-PRESIDENT. The Senator from Wisconsin proposes a substitute for section 4, which will be read.

The SECRETARY. On page 10 of the bill, after line 6, strike out the remainder of the section and insert:

Sec. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon any inquiry instituted by the Commission upon its own motion or upon a complaint made, as provided in section 13 of this act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act, for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such transportation are unjust or unreasonable, or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will, in its judgment, be the just and reasonable rate or rates, charge or charges, to be thereafter observed; and in so doing the Commission shall have power (a) to fix a maximum rate; (b) to fix a differential and to prescribe both a maximum and a minimum rate, to enforce the same when that may be necessary to prevent discriminations forbidden by the third section, but not otherwise; (c) to change the classification of any article; (d) to determine what regulation or practice in respect to such transportation is just and reasonable to be thereafter followed and to make an order that the carrier shall cease and desist from such violation to the extent to which the Commission find the same to exist and shall not thereafter publish, demand, or collect any rate or charge for such transportation in violation of the rate or charge so prescribed and shall conform to the regulation or practice so prescribed. Such order shall go into effect thirty days after notice to the carrier and shall remain in force and be observed by the carrier, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carriers shall fail to agree among themselves upon the apportionment or division of such joint rates, fares, or charges the Commission may, after hearing, make a supplemental order prescribing the portion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

The Commission is also authorized and empowered, and it shall be its duty, whenever, after full hearing upon any inquiry instituted by the Commission upon its own motion or upon a complaint made, as provided in section 13 of this act, or upon complaint of any common carrier, to establish through routes and joint rates to be charged and to prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provisions of this act and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates. Such authority shall extend to the establishment of through routes and through rates wholly by railroad and partly by railroad and partly by water.

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this act.

Mr. LA FOLLETTE. Mr. President, I will take the time of the Senate at this late hour to state very briefly the difference between the substitute which I propose and section 15 of the pending bill.

Section 15 provides that the Commission shall have author-

ity to fix a maximum rate. The proposed amendment gives the Commission authority to fix a maximum rate and, under certain circumstances, a minimum rate, and also gives them control of classification.

That states in a few words substantially the difference between section 15 of the pending bill and the amendment which I have proposed. The bill prepared by the Commission and submitted to the committees of Congress having charge of this legislation contains the essential provisions of the substitute which I propose for section 15. In the general debate I set forth at some length the reasons why section 15 should be amended and the changes which I believed should be made in it. I will not take the time to go into it more fully at present.

Mr. DOLLIVER. Mr. President, I think it is due to the committee to say a word about these provisions. The substitute which my honorable friend from Wisconsin has offered presents two or three matters of importance. The first one is that his substitute clothes the Interstate Commerce Commission with power to originate complaints. That is one of the things which they did not include in the bill which they sent to the committee.

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Wisconsin?

Mr. DOLLIVER. Certainly.

Mr. LA FOLLETTE. In view of the fact that I have spoken and am precluded from speaking again, will the Senator from Iowa yield to me for a moment to make a statement that I omitted?

Mr. DOLLIVER. Certainly.

The VICE-PRESIDENT. The Chair will state that that is contrary to the rule made by unanimous consent.

Mr. DOLLIVER. I will yield for a question or anything which does not deprive me of the meager privileges which I enjoy.

Mr. LA FOLLETTE. I will take but a moment.

The VICE-PRESIDENT. Is there objection? The Chair hears none, and the junior Senator from Wisconsin will proceed.

Mr. LA FOLLETTE. I did neglect to state that this section clothes the Commission with power to make an order upon an investigation which has originated with the Commission. Section 13 of the bill as reported by the committee leaves with the Commission authority to make an investigation upon its own motion, but section 15 does not empower the Commission to make the order to correct a wrong which it may discover upon an investigation under section 13.

Now, section 15, which I propose as a substitute, corrects that obvious defect in the pending bill. That is the only difference with reference to this particular point. It is manifestly absurd to allow the Commission to make an investigation on its own motion under section 13 and then withhold from it all authority to issue an order to remedy the defect or evil which the investigation has disclosed.

Mr. DOLLIVER. What the Senator says is absolutely correct. I have spent a good many hours the past winter in the society of the Interstate Commerce Commission. I will say for them that they appear to be the only people in this town who have a definite and coherent knowledge of the practical aspects of the problems with which we are dealing, and I recognize that fact as thoroughly as my friend from Wisconsin.

I say to the Senate, therefore, that it is not the notion of the Interstate Commerce Commission that there is any need for them to be clothed with the power of originating these complaints. It is their opinion, and I think every practical-minded man will share it, that if we succeed in dealing with all the questions that arise on complaint we will have covered about as large a field as seven able-bodied men will be able to attend to.

I will go further. If the Commission, in making the investigations authorized by section 13, finds itself face to face with a situation that needs correction, there is no difficulty in securing a complaint to correspond with the trouble which they have discovered. That is the view of the subject which they take. So much for that.

Now, the second departure of this substitute from the pending bill is in respect to the maximum rates and minimum rates, and the relation of rates. I have had the opinion that it would be a good thing to put in a section giving the Commission control over the relation of rates, but the more I meditate upon the practical features of the problem the less importance I attach to it. I hold that the command of the high rate, given in section 4 of the pending bill, accomplishes every substantial result that could be obtained by all the other provisions which are contained in the substitute.

I know of no discrimination which is unjust and unlawful, either in rates or classification, that can not be corrected by re-

ducing the rate at its high point, or attaching to the article the rate of the class to which it belongs. If there is a Senator in this Chamber who can give an illustration of a discrimination forbidden by law which can not be corrected by the intelligent exercise of the power over the high rate, I would be glad to suspend a minute to have the illustration given.

Mr. LA FOLLETTE. I should like to furnish that case, if I may.

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Wisconsin?

Mr. DOLLIVER. Certainly.

Mr. LA FOLLETTE. Exactly such cases are cited by the Interstate Commerce Commission, not alone in one, but in several of their reports. I call your attention to one instance. An attempt was made to regulate the rates between Winona, La Crosse, and Eau Claire and Iowa markets for lumber by fixing a maximum rate. This case occurred under the law of 1887, before the Supreme Court deprived them of power to fix rates. The lumber merchants of Eau Claire were unable to get into the Iowa market as against the lumber merchants of La Crosse and Winona without having the rate changed. They applied to the Interstate Commerce Commission to change the rate. They lowered the rate and fixed a maximum rate, whereupon the railroad companies at once dropped the rate for Winona and La Crosse below the rate fixed for Eau Claire, and continued to exclude the Eau Claire lumber merchants from the Iowa market.

Mr. DOLLIVER. I will say to my honorable friend I am familiar with that case, and I will ask him not to dispose of my time any longer.

Mr. LA FOLLETTE. Just a moment. The Commission cite that very case as illustrating the necessity of clothing them with power to fix a minimum rate.

The VICE-PRESIDENT. The Senator from Iowa declines to yield.

Mr. DOLLIVER. And let me say to my honorable friend, in such case under this bill all in the world that would be necessary is for the Interstate Commerce Commission to make another order, and if the railroads continued the discrimination there certainly would be nothing to prevent the Commission from accepting the challenge.

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. The Chair will state to the Senator from Wisconsin that the Senator from Iowa declines to yield further.

Mr. LA FOLLETTE. I will ask the Senator to yield for just another question.

The VICE-PRESIDENT. Will the Senator from Wisconsin suspend?

Mr. LA FOLLETTE. Certainly.

The VICE-PRESIDENT. It is contrary to the spirit of the rule for one Senator to yield his time for debate by another who has occupied the floor in his own right.

Mr. LA FOLLETTE. Very well.

The VICE-PRESIDENT. It can only be done by unanimous consent.

Mr. LA FOLLETTE. I ask unanimous consent to ask the Senator from Iowa a question.

The VICE-PRESIDENT. Does the Senator from Iowa yield for a question?

Mr. DOLLIVER. Certainly.

The VICE-PRESIDENT. The Senator from Iowa yields.

Mr. LA FOLLETTE. I wish to ask the Senator this question: As I understand him, he says the difficulty could be met by simply lowering the maximum rate. Now, is it not true that no matter what maximum rate is fixed, the railroad may still discriminate by lowering the competing rate? If there were authority to fix a minimum rate the railroad could not continue the discrimination.

Mr. DOLLIVER. That is also subject to the order of the Commission, upon complaint, to cease and desist from an unlawful discrimination. I have often heard it said that there are rates at terminal points, like the Missouri River, unreasonably low, and a year ago I shared with my honorable friend the notion that it would be a good thing to give the Commission power to raise the rates, for example, at Omaha. I found certain interior towns that had a disproportionate rate, a rate that was a discrimination as compared with the rate at Omaha, and I yielded a rather enthusiastic assent to the proposition that the true remedy for that was to give the Commission power over the Omaha rate to put it at a minimum or to raise it, finding it too low. But I confess that a year's rather monotonous contact with this question has somewhat altered my views on that. I find that there are six railroads running from Chicago to Omaha, and the first thing I struck was that you can not raise

the rate at Omaha for the Illinois Central without raising it for all the other trunk lines unless you exclude the Illinois Central from participation in the Omaha business. Then I said we will raise them all from Chicago to Omaha, and thereupon some practical minded man said to me that there are several railroads running to Omaha from St. Louis and if you raise all the Chicago rates you turn Chicago's Omaha business over to St. Louis. Then I said we will raise the St. Louis rates also, and along came a man who had some practical knowledge of this world, and he said that would result in the turning of the business of Omaha over to Kansas City and St. Joseph. When I got through my researches on the question, I made up my mind that the remedy was rather elaborate to raise the rates upon the consumers of merchandise—some 10,000,000 or 15,000,000 people—who are tributary to these great distributing points for the purpose of correcting a rate in Iowa or Missouri or Wisconsin that was too high.

I say again, there is no discrimination of that kind that can not be corrected by reducing that high rate; and neither the railroad nor the Government could raise these rates at the Missouri terminals without fastening upon the entire community a hardship altogether worse than the thing we set out to remedy. Therefore I say that every discrimination which is unjust and unreasonable in the ordinary sense of those words can be corrected by reducing the rate at the high point.

Early in this session a very interesting group of people came to see me from Oklahoma City. They stated that it cost them 43 cents to get lumber from the Port Arthur region in Texas to Oklahoma City, while the same railroad carried it right through Oklahoma City to Kansas City for 27 cents. That struck me as an intolerable outrage. I discovered that there were lines at Port Arthur carrying the same lumber directly to Kansas City for 27 cents; and this railroad so complained against could not increase that rate at Kansas City without taking itself altogether out of the lumber business there. When I thought upon the propriety of raising the rates from Port Arthur to Kansas City on all the roads, I found that those rates were old and that they had been beaten down to that low point, not by the railroads, but by the competitive forces of the whole market place of the United States, over which the railroads have had little real control. We represented the fight between Wisconsin and Minnesota and Michigan against southern pine for the Kansas City market.

That low rate at Kansas City could not be disturbed either by the railroads or by the Government without inflicting a burden upon millions of people. I therefore made up my mind that the only practicable remedy for the situation of our friends in Oklahoma City was to take up that 43-cent rate and reduce it, if it can be shown that it is unjust and unreasonable. So the suggestion that we ought to control the right of a railroad to reduce rates simply introduces a persuasive phraseology into this bill without adding anything to its efficiency in correcting the abuses which ought to be corrected.

I will say to my honorable friend that that is the view which is shared to-day by the members of the Interstate Commerce Commission.

Mr. McLAURIN. I offer an amendment to the amendment, which I send to the desk.

The VICE-PRESIDENT. The Senator from Mississippi proposes an amendment to the amendment proposed by the Senator from Wisconsin [Mr. LA FOLLETTE], which will be stated.

The SECRETARY. On page 2 of the amendment of Mr. LA FOLLETTE, line 8, it is proposed to strike out the word "both," where it appears after the word "prescribe;" and in the same line to strike out the words "and a minimum;" so as to read:

To fix a differential and to prescribe a maximum rate.

Mr. BAILEY. Mr. President, the trouble with the answer which the Senator from Iowa [Mr. DOLLIVER] has made to the Senator from Wisconsin [Mr. LA FOLLETTE] is that it will not work. He says that the Commission can easily remedy a trouble such as that instanced by the Senator from Wisconsin by still further reducing the rate; but the Senator from Iowa forgets that his own bill commands the Commission to fix a rate that is reasonable and just as a maximum, and when that is done the Commission can not put it any lower. If it does, the railroad goes into court and restrains it as unjust and unreasonable. Therefore the evil can not be corrected in that way.

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Iowa?

Mr. BAILEY. I do.

Mr. DOLLIVER. There is certainly nothing in this bill to prevent the Commission from taking the testimony of the railroad itself with reference to what the proper rate ought to be. If the Commission finds that the railroad is fixing a lower

rate, there is room at least to indulge the presumption that the Commission would not be very seriously disturbed by a court of justice if they did such an act as that.

Mr. BAILEY. But the railroad can put its rate as low as it chooses. It can not put it above a fair and just compensation under the common law, but it can put it as low as it chooses; and the Senator from Iowa will not contend that because the railroad chooses to put its rate below a just compensation the Commission can do the same.

Does the Senator from Iowa suppose that under this bill any carrier would be compelled in a court, because it had seen fit to put its rate too low, to dismiss its complaint against the Commission when it could prove that the commission rate was not a just and reasonable one?

Now, Mr. President—

Mr. DANIEL. Mr. President—

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Virginia?

Mr. DANIEL. Merely for a question.

Mr. BAILEY. I yield.

Mr. DANIEL. Is it not true that a railroad company has no right in making a low rate at any time to fix it below cost?

Mr. BAILEY. A railroad, unless restrained by a statute, can, and does, transport persons and property for nothing. Its stockholders might go into court and restrain that mismanagement, but the Government would have no power to object.

Mr. DANIEL. I want to call the attention of the Senator from Texas to the fact that the Supreme Court has held that, with reference to a low rate, the company has no right to put the rate below cost, for the reason that it is acting as a trustee.

Mr. BAILEY. That is as to the owners of the stocks and bonds.

Mr. DANIEL. That is true.

Mr. BAILEY. I am not raising that question. I freely concede that what the Senator says is true so far as that is concerned.

Mr. DANIEL. That shows that it is within the power of the Commission to put a limit on the lowness of the rate, because it might be a violation of a public trust.

Mr. BAILEY. Mr. President, the philosophy of this whole question is the absolute rate, and this bill proceeds upon that philosophy. In this very bill it is provided that when the carrier publishes its rate it does not publish a maximum rate, but it publishes an absolute rate, and it is not permitted to charge less, even though it charges everybody less. To say that a carrier is compelled to fix an absolute rate, but that the Commission whose duty it is to fix a just and reasonable rate shall only fix a maximum one is a palpable absurdity. The truth is that the President has compromised on this question, as did the Senator from Iowa. I do not say that the present opinion of the Senator from Iowa does not represent his judgment to-day, but it does not represent the judgment of the Senator or of the President or of the Republican party on it when the Esch-Townsend bill was introduced and passed by the House of Representatives a little over two years ago.

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Wisconsin?

Mr. BAILEY. I yield to the Senator.

Mr. LA FOLLETTE. Mr. President, the point has been made all through this debate that the Interstate Commerce Commission under this law is not to be given any control over the relation of rates. Now, I wish to ask the Senator how it would be possible to meet just such a case as is suggested by the conditions at Eau Claire, in competition with La Crosse and Winona, and the cases which arise out of the conditions at Kansas City and St. Louis, unless you trench upon the relation of rates? I think that is the hole in this bill, at least it is one of them.

Mr. BAILEY. It is absolutely impossible to correct such an abuse, because if the Commission has already fixed the rates between two points and fixed them at what is just and reasonable, then if it attempted to lower them the Commission would be restrained by the courts.

Mr. President, suppose a railroad has two classes of customers—one producing wheat and the other producing coal. Suppose the Commission fixes a maximum rate on both, and the railroad says to the people who produce coal that it will carry their goods for 80 per cent of the maximum rate, but charges the people who produce wheat the full maximum rate. That is not a discrimination condemned by this bill, and yet no Senator will defend it, because a railroad has no fair right to charge one man a full rate while serving another man for less than full rate. No Senator will defend such a practice in shipping the same commodities from the same point, but this bill permits and encourages it when different commodities are shipped from different points.

I hold that every man in this country is entitled to use the railroads by paying a just compensation for the service which he employs, and the railroads are entitled to receive from every man who uses them a just compensation for the service which they render; but whenever the railroad serves one man for less, in the nature of things it must charge the other man more, because if under the lower charge against some traffic it is earning a return upon the value of its property, a readjustment would permit at least a slight reduction in all charges.

In the case I have instanced, where the produce hauled was coal on one side and wheat on the other, instead of permitting them to charge for carrying wheat 100 per cent of the maximum rate and only 80 per cent of the maximum on coal, we could fix the charge at 90 on both. The amendment of the Senator from Wisconsin does not go as far as I want to go. Instead of adopting the maximum and minimum, I prefer the absolute rate. We have had that in Texas for sixteen years and nobody has ever found any fault with its operation there.

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Wisconsin?

Mr. BAILEY. I do.

Mr. LA FOLLETTE. Just to say, in order that my position may not be misunderstood, that I have tried in the amendments which I have suggested to this bill to keep within the recommendations of the Interstate Commerce Commission. I am in favor, as is the Senator from Texas, of clothing the Commission with power to fix an absolute rate, which I think is the only logical basis upon which rates can be regulated.

Mr. BAILEY. Mr. President, I am glad to know that the Senator concurs in my view. It is the view adopted by nearly every earnest friend of this legislation. It was the view of the Senator from Iowa [Mr. DOLLIVER] until within these last twelve months he has become a little confused with the abundance of his learning; but in another twelve months—

Mr. DOLLIVER. That is a trouble from which my friend from Texas is not likely to suffer.

Mr. BAILEY. I would be willing to submit that to everybody who knows the Senator from Iowa and myself. I always know the provisions of any bill which I help to report to this Senate, and the Senator from Iowa—

Mr. DOLLIVER. I know of nothing my honorable friend has not appeared to know during these discussions.

Mr. BAILEY. Your "honorable friend" has pretended to know nothing that he did not know, as the Record here will show.

Mr. DOLLIVER. There has been a difference of opinion over there on that.

Mr. BAILEY. Yes; there are differences of opinion over here. It is true that any proposition I might make would be dissented from by some on this side. That is true; but that does not convict me of any error. That is one of the infirmities of mankind; but it is not good taste for the Senator from Iowa, who is not concerned with differences over here, to be talking about them across the aisle.

Mr. DOLLIVER. Mr. President, I do not know—

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Iowa?

Mr. BAILEY. I do.

Mr. DOLLIVER. I certainly did not introduce this note of disparagement of my colleagues here. I make no pretensions to any particular knowledge of these things, except what I have been able to pick up by sitting up nights during the winter. If I had got hold of as small a point as that which my honorable friend discoursed upon here in the Senate for four hours, I believe I would have had discretion enough to have got rid of it in less than that time.

Mr. BAILEY. Mr. President, when the Senator from Iowa and I first discoursed about that subject, he said he disagreed with me, and after I finished that speech he said he agreed with me. So I did not speak altogether in vain.

Mr. DOLLIVER. If I undertook to agree with everything that my friend said in that four hours, I would have been in a bewildered condition.

Mr. BAILEY. That is the Senator's usual condition. [Laughter.]

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Mississippi [Mr. McLAURIN] to the amendment in the nature of a substitute proposed by the Senator from Wisconsin [Mr. LA FOLLETTE].

Mr. McLAURIN. Mr. President, I have been asked by a Senator sitting near me to state what is the effect of that amendment. The purpose I had in offering it was to strike out the power of the Commission to fix a minimum rate. I do not want to discuss it. I am opposed to the fixing of a minimum rate,

and I have offered an amendment to the amendment which I think, if adopted, will strike out the power of the Commission to fix a minimum rate. That is the purpose of the amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Mississippi [Mr. McLAURIN] to the amendment in the nature of a substitute proposed by the Senator from Wisconsin [Mr. LA FOLLETTE]. [Putting the question.] By the sound the "noes" have it.

Mr. McLAURIN. I ask for the yeas and nays.

Several SENATORS. No, no.

Mr. McLAURIN. Then, I ask for a division, Mr. President.

The question being put, there were on a division—ayes 18, noes 46.

So Mr. McLAURIN's amendment to the amendment of Mr. LA FOLLETTE was rejected.

The VICE-PRESIDENT. The question recurs on the amendment in the nature of a substitute proposed by the Senator from Wisconsin [Mr. LA FOLLETTE].

The amendment was rejected.

The VICE-PRESIDENT. The Secretary will read the next section.

The Secretary proceeded to read section 5.

Mr. CULBERSON. I should like to ask if it is in order to offer an amendment at this time?

Mr. CULLOM. Has the reading of the section been completed?

The VICE-PRESIDENT. It has not been. An amendment is not in order until the reading of the section is completed.

Mr. CULLOM. So I supposed.

The Secretary resumed and concluded the reading of section 5, as follows:

Sec. 5. That section 16 of said act, as amended March 2, 1889, be amended so as to read as follows:

"Sec. 16. That if, after hearing on a complaint made as provided in section 13 of this act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after.

"In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper, and the orders of the Commission shall take effect at the end of thirty days after notice thereof to the carriers directed to obey the same, unless such orders shall have been suspended or modified by the Commission or suspended or set aside by the order or decree of a court of competent jurisdiction: *Provided, however*, That the Commission, for good cause shown, may extend the time in which such order shall take effect.

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section 15 of this act, shall forfeit to the United States the sum of \$5,000 for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

The forfeiture provided for in this act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for

the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this act, paying the expenses of such employment out of its own appropriation.

"If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

"From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

"The venue of suits brought in any of the circuit courts of the United States to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office. The provisions of 'An act to expedite the hearing and determination of suits in equity, and so forth,' approved February 11, 1903, shall be, and are hereby, made applicable to all such suits, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the act to regulate commerce approved February 4, 1887, and all acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting act of February 11, 1903, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes.

"The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals."

Mr. CULLOM. I offer an amendment on behalf of the Senator from Iowa [Mr. ALLISON], who was compelled to return to his home.

The VICE-PRESIDENT. The amendment proposed by the Senator from Illinois will be stated.

The SECRETARY. On page 14, line 20, after the word "proper," it is proposed to insert a period and to strike out the remainder of line 20 and all down to and including the word "effect," in line 2, on page 15.

The amendment was agreed to.

Mr. CULLOM. I offer the amendment I send to the desk.

Mr. TILLMAN. We have been working here now nearly seven hours, and a good many Senators have asked me to move that the Senate adjourn. I do not think we will expedite matters by considering these amendments to-night, and I therefore move—

Mr. KEAN. Let these amendments be read.

Mr. ALDRICH. I will ask the Senator from South Carolina to allow me to make a request. I ask that the first four sections of this bill may be reprinted and be here in the morning, with the amendments already adopted by the Senate.

Mr. TILLMAN. Certainly; I will be glad to have it.

Mr. SPOONER. Indicating the amendments.

The VICE-PRESIDENT. Is there objection to the request for reprinting made by the Senator from Rhode Island?

Mr. GALLINGER. If there are amendments which have been offered and not acted upon, let them be printed in brackets and small capitals.

Mr. CULLOM. I hope we may act upon the amendment.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Rhode Island? The Chair hears none. The amendment proposed by the Senator from Illinois will be stated.

The SECRETARY. On page 17, line 11, after the words "United States," it is proposed to insert "against the Commission."

Mr. CULLOM. I hope the amendment will be adopted.

The amendment was agreed to.

Mr. TILLMAN. Mr. President—

Mr. ALDRICH. Let the Senator offer his other amendment.

Mr. CULLOM. I offer the amendment I send to the desk.

The SECRETARY. On page 17, line 14, after the word "office," insert the following:

And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts.

Mr. TILLMAN. I want to offer a substitute for that in the morning, and I therefore insist either on an executive session or adjournment.

Mr. RAYNER. I will offer an amendment.

The VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from Maryland?

Mr. TILLMAN. With pleasure.

Mr. RAYNER. I have already proposed an amendment, but I want to change it and offer this in lieu of the amendment I proposed and have it printed. I just propose the amendment.

Mr. TILLMAN. I want an adjournment or an executive session; I do not care which.

Mr. CULLOM (to Mr. TILLMAN). Move that we adjourn.

Mr. RAYNER. I understand that my amendment is to be printed along with the rest.

The VICE-PRESIDENT. It will be printed.

Mr. TILLMAN. I move that the Senate adjourn.

The VICE-PRESIDENT. Will the Senator from South Carolina withhold the motion for a moment?

Mr. TILLMAN. Certainly.

ESTATE OF ALFRED SWEARINGIN, DECEASED.

The VICE-PRESIDENT. The Chair lays before the Senate, on behalf of the Senator from Mississippi [Mr. MONEY], a proposed order, which will be read.

The Secretary read as follows:

Ordered, That the Committee on Claims be discharged from the further consideration of the bill (S. 3355) for the relief of the estate of Alfred Swearingin, deceased, and that the Secretary of the Senate be directed to transmit the papers accompanying the same to the Court of Claims in accordance with the request.

Mr. FULTON. I object to the present consideration of the order.

The VICE-PRESIDENT. Under objection, the order will lie over.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the following bills:

- S. 394. An act granting an increase of pension to Amanda Lucas;
- S. 442. An act granting an increase of pension to Francis Colton;
- S. 522. An act granting an increase of pension to Emma Worrall;
- S. 557. An act granting an increase of pension to Mariot Losure;
- S. 678. An act granting an increase of pension to Albert Butler;
- S. 869. An act granting an increase of pension to Baltzar Mowan;
- S. 993. An act granting an increase of pension to Samuel J. Langdon;
- S. 1223. An act granting a pension to Mary E. Bronaugh;
- S. 1508. An act granting an increase of pension to James A. Murch;
- S. 1513. An act granting an increase of pension to Harriett A. Rawles;
- S. 1705. An act granting an increase of pension to Lewis S. George;
- S. 2043. An act granting an increase of pension to Andrew H. Wolf;
- S. 2194. An act granting an increase of pension to William H. Sweeney, jr.;
- S. 2467. An act granting an increase of pension to Martin Clark;
- S. 2851. An act granting an increase of pension to George Chambers;
- S. 2978. An act granting an increase of pension to Eli W. Knowles;
- S. 3033. An act granting an increase of pension to Aaron F. Patten;
- S. 3040. An act granting a pension to Mary C. Wilsey;
- S. 3219. An act granting an increase of pension to Joseph M. Allison;
- S. 3271. An act granting an increase of pension to Margarette E. Brown;
- S. 3299. An act granting an increase of pension to Spencer C. Stilwell;

S. 3483. An act granting an increase of pension to William L. Sheaff;
 S. 3485. An act granting an increase of pension to Mathias Hammes;
 S. 3738. An act granting an increase of pension to Lisania Judd;
 S. 3797. An act granting an increase of pension to Ahimaaz E. Wood;
 S. 3798. An act granting an increase of pension to Charles Farrel;
 S. 4005. An act granting an increase of pension to Michael Quill;
 S. 4048. An act granting an increase of pension to Henry S. Knecht;
 S. 4175. An act granting an increase of pension to John Caverly;
 S. 4177. An act granting an increase of pension to Harlan P. Cobb;
 S. 4239. An act granting an increase of pension to Job Rice;
 S. 4358. An act granting an increase of pension to Thomas McCormick;
 S. 4361. An act granting an increase of pension to John W. Daley;
 S. 4401. An act granting an increase of pension to George W. Tomlinson;
 S. 4457. An act granting an increase of pension to Louis A. Tyson;
 S. 4460. An act granting an increase of pension to Ann J. Thompson;
 S. 4488. An act granting an increase of pension to James F. Amis;
 S. 4525. An act granting an increase of pension to David Oglevie;
 S. 4569. An act granting an increase of pension to Augustus A. Nevins;
 S. 4665. An act granting an increase of pension to Lewis Du Bois;
 S. 4692. An act granting an increase of pension to Adaline M. Thornton;
 S. 4718. An act granting an increase of pension to George W. Gilson;
 S. 4752. An act granting an increase of pension to Thomas J. Tidswell;
 S. 4796. An act granting an increase of pension to Lorinda J. White;
 S. 4983. An act granting an increase of pension to John M. Farquhar;
 S. 5054. An act granting an increase of pension to George H. Woodard;
 S. 5082. An act granting an increase of pension to David N. Winsell;
 S. 5163. An act granting an increase of pension to John Marah;
 S. 5247. An act granting an increase of pension to Jacob Wigal;
 S. 5343. An act granting an increase of pension to Ernest H. Wardwell;
 S. 5349. An act granting an increase of pension to William H. H. Robinson;
 S. 5359. An act granting an increase of pension to William H. Ward;
 S. 5379. An act granting an increase of pension to Otto A. Risum;
 S. 5492. An act granting an increase of pension to Joseph F. Tebbetts;
 S. 5504. An act granting an increase of pension to Joseph Dickson;
 S. 5516. An act granting an increase of pension to Alfred M. Hamlen;
 S. 5522. An act granting an increase of pension to Charles E. Sisco;
 S. 5523. An act granting an increase of pension to Thomas J. Pickett;
 S. 5532. An act granting an increase of pension to Simon A. Snyder;
 S. 5539. An act granting an increase of pension to Hermann Muehlberg;
 S. 5562. An act granting an increase of pension to John Hull;
 S. 5571. An act granting an increase of pension to Betsey B. Whitmore;
 S. 5579. An act granting an increase of pension to Henry T. Sisson;
 S. 5603. An act granting a pension to Kate S. Hutchings;
 S. 5631. An act granting an increase of pension to Isaac M. Howard;

S. 5640. An act granting an increase of pension to Clinton B. Wintersteen;
 S. 5641. An act granting an increase of pension to John W. Fletcher;
 S. 5658. An act granting an increase of pension to Nancy Fruit;
 S. 5659. An act granting an increase of pension to William I. Brewer;
 S. 5668. An act granting an increase of pension to George P. Sealey;
 S. 5671. An act granting an increase of pension to Richard L. Delong;
 S. 5673. An act granting an increase of pension to Hilton Springsteed;
 S. 5680. An act granting an increase of pension to Thomas J. Bowser;
 S. 5702. An act granting an increase of pension to Anna C. Bingham;
 S. 5704. An act granting an increase of pension to Ruth P. Pierce;
 S. 5735. An act granting an increase of pension to Andrew D. Danley;
 S. 5736. An act granting an increase of pension to Mary Clark;
 S. 5754. An act granting a pension to Hannah McCarty; and
 S. 5780. An act granting a pension to Lorenzo E. Johnson.
 Mr. TILLMAN. I renew the motion that the Senate adjourn. The motion was agreed to; and (at 5 o'clock and 51 minutes p. m.) the Senate adjourned until to-morrow, Saturday, May 12, 1906, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES.

FRIDAY, May 11, 1906.

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

ADJOURNMENT OVER

Mr. PAYNE. Mr. Speaker, I move that when the House adjourn to-day it adjourn to meet on Monday next.

The SPEAKER. The question is on the motion of the gentleman from New York that when the House adjourn to-day it adjourn to meet on Monday next.

The question was taken; and the motion was agreed to.

SEIZURE OF SCHOONER LIZZIE B. ADAMS.

Mr. ADAMS of Pennsylvania. Mr. Speaker, I am instructed by the Committee on Foreign Affairs to report the House resolution 420, with certain amendments, with the recommendation that the amendments be agreed to, and that the resolution as agreed to be adopted.

The SPEAKER. The Clerk will report the resolution, with the amendments.

The Clerk read as follows:

House resolution No. 420.

Resolved, That the Secretary of State be, and hereby is, requested to inform the House of Representatives, if not incompatible with the public interest, what information, if any, is in possession of the Department of State in regard to the reported arrest of the crew of the American schooner Lizzie B. Adams by the authorities of the Republic of Mexico.

Mr. ADAMS of Pennsylvania. Mr. Speaker, I move that the resolution as amended be adopted. Before that question is put, I would like to state, for the information of those who are interested in the matter of the seizure of these vessels in Mexican waters, that the committee has been informed that the State Department has taken the matter up, and our ambassador at Mexico has been instructed to look into the matter; that under the date of the 22d of April a letter has been received from our consul at Progreso, in which he states that he has the matter in charge, and that American interests are being safeguarded.

The SPEAKER. The question is on agreeing to the amendment in the nature of a substitute.

The question was taken; and the amendment was agreed to.

The SPEAKER. The question is on agreeing to the resolution.

The question was taken; and the resolution as amended was agreed to.

The SPEAKER. The question now is on striking out the preamble.

The question was taken; and the motion was agreed to.

Mr. WANGER. Mr. Speaker, I desire to move to correct the Journal of Wednesday, May 9. I am recorded among those not voting. The fact is I was present and distinctly answered "present" on the first call of the roll.